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Bureau of Indian Affairs

Branch of Real Property Management

Acquisition and Disposal

20.12/2:

ACQUISITION AND DISPOSAL

A Training Manual in Real Property Management

Prepared by

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for

U.S. Bureau of Indian Affairs
Aberdeen Area Office
Aberdeen, South Dakota
and
U.S. Bureau of Indian Affairs
Washington, D.C.

January, 1984

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Preface

This training manual, Acquisition and Disposal, is one of eight designed to be used in a new BIA Real Property Training Program. The purpose of this program is to standardize Real Property practices throughout the Bureau of Indian Affairs, and to upgrade the technical services provided by Bureau personnel by fully familiarizing them with these standard procedures. In order to accomplish this educational task, these manuals are presented in clear and precise language for in-house training at all levels of operation, from the local Agency to the Central Office.

Land has always been important to Indian culture and religion, and it has also been at the center of most disputes involving Indians. Federal Indian policy has usually been designed to allocate or adjust property rights, and the possession of special property rights distinguishs Indians from other American citizens. Accordingly, the administration of trust property has always been a key element of the Bureau's trust responsibility to tribes as well as individual tribal members.

Each year the problems involved in managing the approximately 52 million acres of real property that remains in trust become more complex. At the same time, the Bureau strives to meet the increased demand for more efficient administration. In order to help meet this dual challenge, I was directed to develop this Real Property Training Program. It is therefore my personal goal to substantially increase the technical skill level of all Real Property personnel. And that is also the fundamental purpose of this manual, which I hope you find useful and informative.

Finally, I would like to acknowledge the dedicated efforts of Sidney L. Mills, Director of the Office of Trust Responsibilities in Washington, and Fred Gillis, Real Property Management Officer in Aberdeen, in helping to develop and coordinate this training program.

Sincerely,

Jerry L. Jaeger
Area Director

FOREWORD

The Real Property Management Training Manuals are designed to be taught by several types of individuals, including BIA employees and external specialists. In this respect, the manuals are minimal and instructors are urged to go beyond them in teaching the course. Instructors are expected to read all four chapters thoroughly and supplement them with their own experience and any special technical knowledge or administrative procedures or regulations that apply to the jurisdiction(s) where the trainees work.

It is expected that each instructor will bring to the classroom some special experience(s) that expand on and clarify particular points in the manual. To present the trainees with the content of the manual, only, is a minimal approach to teaching the course. With this expectation in mind, instructors are encouraged to consider the manual as minimal and to draw from their own experience and knowledge.

The instructor may wish to make notes pertaining to additional reading material available at the local levels that can be included in the course. Instructors will be well advised to open each session with a brief review of the prior material. That is, when you are beginning Session Two, start the instruction with a review of Session One and so on.

The training manuals were developed with the understanding that instructional aids such as overlays, video tapes, etc. would, generally, be unavailable at the training sites. The approach written into the manuals was primarily reading, and a chalkboard. It is, therefore, essential that the trainees be provided with an opportunity to read the manual before lectures are given. If the textual material is not available to trainees, the instructor will have to spend a much larger amount of time in presenting the chapters.

Because of the recent passage of the 1983 Land Consolidation Act, its full impact has not yet been realized. Instructors should make every effort to update this material.

The Real Property Management Training Manuals have been developed with the intent of improving the performance of officials involved in the Realty program. If this basic goal is in some measure realized, then the administration of BIA's trust responsibility will have been improved considerably. To this end, the training manuals are dedicated.

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Chapter 1

Session One - History, Authority and Methods of Sale or Transfer of Indian Land

Course Outline - Session One

I. History
  A. Pre-Allotment Act Period
  B. Allotment Act Period
  C. Legislative Authority for Conveyance
II. Indian Land Sale Policy
  A. Present Land Sale Policy
  B. Results of Indian Land Sale Policy
III. Heirship
  A. Inheritance of Indian Land
  B. Dealing with Inheritance Problems
    1. Act of June 25, 1910
    2. Bennett Era - Omnibus Act
    3. Act of January 12, 1983

Learning Objectives. Participants should:

1. Know and understand the origin of the allotment policy.

2. Know and understand the reasons for a land sale

policy and the results of it.

3. Know and understand the problems caused by inheritance, multiple ownership and efforts to resolve problems.

History, Authority and Methods of Sales or Transfer of Indian Land

One of the key job responsibilities of the Branch of Real Property Management in the Bureau of Indian Affairs (BIA) is the function commonly referred to as Acquisition and Disposal. Acquisition and Disposal, as it relates to individual and tribal land interests includes the sale, purchase or other means of transferring ownership interests in land. The land or interest involved is either full individual ownership, inherited interests or tribal ownership. Restricted, trust lands and non-trust lands being acquired in trust status form the nucleus of the acquisition and disposal responsibility.

Bureau of Indian Affairs Real Property Management employees are the key staff involved in the management of the Acquisition and Disposal function which involves sales, purchases, exchanges, partionment and consolidation of tribal and individual land interests. For the purposes of this session, the processing of heirship interests will not be emphasized because that subject is covered in a separate training session entitled Probates.

An important related responsibility is the documentation of all Acquisition and Disposal transactions for completeness, accuracy and in meeting all necessary statutory and regulatory requirements. The BIA Acquisition and Disposal function requires the same knowledge, skills and expertise of a commercial real estate operation with the added responsibility created by the unique Federal-Indian trust relationship.

The trust relationship creates an additional unique real estate role because the Bureau employee serves as trustee for both tribal and individual land interests, which at times are in conflict.

The Acquisition and Disposal responsibility of the Branch of Real Property is basically that of a real estate agent, escrow agent and a county recorders office for Indian real estate transactions.

History

The root of the Bureau's Real Property Management responsibility began with European-American Indian contact. The history of Indian Affairs could be said to be a series of land transactions interspersed with military conflict, social, cultural, religious, economic and/or other similar interaction.

The history of the ownership of Indian land for the purpose of this training session relates to Indian land ownership, land uses, policy and heirship.

Pre-Allotment Act Period. The trust responsibility of the United States with regard to Indian land started in the Colonial period when English laws and practices held that title to newly discovered land was with the English Crown and/or government but subject to a compensable right of occupancy to the aboriginal people.

This compensable right took the form of treaties which involved direct payments and the setting aside of reservations which converted the "aboriginal rights" to a clearly defined title.

The initial land dealings between the United States involved the reserving of land for the tribe. Through treaties and agreements, Indian leaders ceded large tracts of land to the United States over which the tribe claimed ownership. There were, however, plots of land on which individual Indians resided and made improvements that had to be taken into consideration. Recognizing these individual interests, many of the early treaties began to "reserve" lands for the use, occupancy or ownership of individuals or families. These reserved lands were the beginnings of the allotment system.

As early as 1798, in the Treaty of June 1, with the Oneida Nation, allotments were made to individuals or families. From that period on "allotments" were made in various forms and for a variety of reasons. In some cases land was held in trust for the individual, in other cases title was obtained under restriction against alienation without the consent of the President, or title was acquired in fee simple.

The acquisition of land by individuals was related to policies for terminating tribal existence. In some cases allottees surrendered their interests in the tribal estate and became citizens.

During the 1850s, the division of tribal lands and the efforts to terminate tribal existence through the allotment process assumed a pattern for breaking up the tribal estate. This matter of acquisition of land by individuals during the land years of the treaty making period served as models for legislation that led up to the General Allotment Act.

Allotment Act Period. The use of the tribal estate by individual Indians and the recognition of such a "right" served as a basis for allotting land and this, combined with other "national interests," expedited the allotment effort.

The value and demand for land grew, particularly during the post Civil War era, as settlement spread to the West. Some members of the United States Congress had the firm belief that if the non-Indian could become self-sufficient with a plot of land, or the "forty acres and a mule syndrome" of the times, the Indian could also become self-sufficient through agriculture.

There was also a belief that the self-sufficient, agriculturally based philosophy along with the private ownership of property would serve as a stimulus to the Indian. Through this means, individual effort would break-up tribalism and Indian people would merge into the agricultural society of that period of history.

The advocates of acculturation and assimilation of Indians into the general society of America, led by Senator Dawes, resulted in the passage of the General Allotment Act of February 8, 1887. The General Allotment Act was amended by the Act of February 8, 1891.

Under these Acts, reservations with no provisions for allotments in their treaties could vote to have allotments issued to eligible members. Many reservations availed themselves of this opportunity. It was encouraged by the Department of the Interior and pressure was applied on reservations where there was some opposition to allotments. The Act provided 80 acres of agricultural land, 160 acres of grazing or 40 acres of irrigable land. These allotments were often obtained in family clusters.

Under Section 4 of the Act of February 8, 1887, an Indian not residing on a reservation or for whose tribe no reservation was provided could apply for an allotment on the public domain. An 1891 amendment extended this portion of the Act so that an Indian entitled to any allotment "under existing laws" could obtain one on the public domain.

The Act of June 25, 1910, (25 USC 337) authorized allotments on National Forest land under certain conditions. Some of the public domain allotments were acquired in clusters by Indian communities which were later recognized by the Department of the Interior.

These laws still exist. In the 1960s, some individuals encouraged applications for public domain allotments. MAny Indians applied and obtained certificates of eligibility. The Indian only needed to show he was a recognized Indian "of an enrolled tribe" and not necessarily an "enrolled member." Many applications were filed. Almost all failed because the Secretary of the Interior or the Secretary of Agriculture found upon review that the land was not suitable for allotment purposes.

Special allotment acts were passed for specific reservations. Most patents provided for a trust-protection period of 25 years. This term was extended periodically by Acts of Congress (See 25 CFR, Subchapter O, Chapter 1, which lists the extensions).

New allotments were created well into the 1920s and the era ended with the Wheeler Howard Act also known as the Indian Reorganization Act of 1934.

The changing of land status from tribal to individual or heirship owned land eroded the Indian land base. In 1880, the Indian land base consisted of approximately 150,000,000 acres. In 1984, the total allotted and tribal land base was approximately 52,000,000. Most of this land alienated from Indian ownership was allotted land.

About 1917, Competency Commissions were formed. Indians who were judged competent and were one-half or less Indian blood were given unrestricted fee patents to their land without application from the landowners. This was subsequently ruled illegal by the Federal courts, and by the Act of February 26, 1927 (44 Stat. 1247; 25 USC 352a), the Secretary was authorized to cancel a fee patent issued without consent. This affected land was owned by Indians in fee and many allotments were lost due to tax foreclosure sales. Under the Bureau's statute of limitations claims for damages, there are still many unresolved cases.

Legislative Authority for Conveyance. As the events of history created a land ownership system for individual Indians and tribes, out of necessity, there grew a system needed to manage and record land transactions. Individuals with this ownership and tribes acquired a "bundle of rights," and a Federal trusteeship evolved with a legal responsibility to provide services to protect and manage those "bundle of rights." Congress, vested with the power of the Commerce Clause to "regulate" programs, provide the authority for handling Indian land transactions. This authority was implemented by legislation assigning the operating responsibility to the Department of the Interior which in turn was mostly re-delegated to the Bureau of Indian Affairs with the actual staff work for Indian land transactions ending up in the Branch of Real Property Management.

The legal authority for the conveyance of Indian land is through legislation. There are numerous Acts of Congress adopted to serve this purpose.

The Act of May 27, 1902 (25 USC 379), authorized the Secretary to approve sale by heirs of allottees in a non-trust status, the same as if a patent had been issued for this land.

The Act of June 21, 1906 (25 USC 409), authorized the Secretary of the Interior to approve conveyances by the allottee of lands within a reclamation project.

The Act of March 1, 1907 (25 USC 405), authorized sale and approval of conveyances by the original allottee or the Indian owner of an interest through inheritance to a non-trust status, the same as if a fee patent had been issued.

The Act of May 29, 1908 (25 USC 404), authorized issuance of a fee patent in the names of competent heirs and the sale of land of incompetent heirs with a fee patent issued to the purchaser.

The Act of June 25, 1910 (25 USC 372), provides for ascertainment of heirs of deceased allottees upon notice and hearing and vesting in the Secretary the power to cause such lands to be sold if one or more of the heirs is decided to be incompetent.

The Act of May 18, 1916 (25 USC 378), provides authority for the Secretary to partition inherited land among heirs.

The Act of February 14, 1931 (25 USC 451), authorizes acceptance of property donations for the benefit of Indians.

The Act of March 2, 1931 (25 USC 409a), as amended by the Act of June 30, 1932, authorizes the Secretary to use funds from the sale of trust restricted lands for the purchase of other lands in the same trust or restricted status.

The Act of June 18, 1934 (25 USC 465), authorizes the Secretary to acquire land in trust on reservations which accepted the Reorganization Act and was designed to prevent the alienation of Indian lands.

The Act of May 14, 1948 (62 Stat. 236; 25 USC 483), the Secretary was authorized to issued fee patents on land sales on the application of owners previously prohibited by the Reorganization Act.

The Act of March 29, 1956 (70 Stat. 62), authorized mortgages using individual trust land as collateral.

The Act of January 12, 1983, as amended by P.L. 98-608, (96 Stat. 2515) extends Section 5 of the Act of June 18, 1934, to the reservations that did not accept the Reorganization Act and tribes can purchase under limited conditions with the consent of over 50 percent of the undivided interests.

Indian Land Sale Policy

The policy of Indian land sales has fluctuated throughout the history of Indian affairs. The reasons for sales have included the economic needs of the individuals, the philosophies of the politicians and the bureaucrats, the greed of the entrepeneur, the promise of citizenship, sociological advances and changes. Whatever the cause the effort resulted in the Indian land base being greatly diminished.

The Indian Reorganization Act created a situation which provided funds and authorizations for purchase of land from fee to trust and trust to trust. It also resulted in policies that reduced and slowed down land sales.

During recent years, using the authority of the Act of April 11, 1970 (24 Stat. 120; 25 USC 488), tribes have purchased additional land through the use of tribal funds and loans from the Farmers Home Administration. Notwithstanding these efforts, individual Indians continue to sell allotted land interests, further reducing the individual land base. Currently the 1983 Act as amended provides for opportunities to expand the Indian tribal land base.

During periods when land was sold the sales were concentrated in the following types of land.

1. Agricultural Land. Non-Indians bought, settled upon and developed land that could be farmed profitably. Usually the first purchase provided a home base and subsequent purchases added to it. The farm base was often supplemented by leased Indian land. This made inroads to non-Indian presence on reservations.

2. Forested Land. The demand for land as a source of logs for home building and commercial purposes also served as a motivation for purchasing Indian lands.

3. Urban Lands. The Puyallup Reservation in the State of Washington was sold off except for one small tribal parcel and became a substantial part of the City of Tacoma. The City of Hardin, Montana, consists entirely of former trust allotments. These are examples of reduction of the Indian land base.

The sale of these lands fluctuated with the economy and policies of the localities and the Federal administration. Sales were high during the period. From about 1910 to the Great Depression, the growing economy increased demand for land and the Bureau policy being consistent with the creation of the Competency Commissions, encouraged Indians to patent and sell land.

There were also some sales between Indians during the Thirties and extending into the 1950s when the modern Realty Branches were formed. The position of Agency Farmer, which later became the Extension Agent, worked with Indians to help them become independent ranchers and farmers. These same people often handled Real Property Management functions on the reservation and many became Realty officers. They would encourage Indian farmers and ranchers to establish a land base by purchasing allotted land. The Agency Farmer had a real conflict of interest. Their trust interest was to create a successful Indian farmer or rancher. Loan funds, replacement cattle, etc., were available, which helped in the capitalization. It appears that some sales were made below appraised value and often the seller received no more in annual payments on contract sales than he would have received from rent. Undoubtedly many existing Indian operators were benefitted and exist today because of this. This represents the type of conflicts of interests that impact on many decisions made by the Realty Branch.

When Franklin D. Roosevelt became President of the United States, he appointed John Collier as Commissioner of Indian Affairs. Collier pushed the Indian Reorganization Act which was based on his philosophy and the results of the Merriam Report of 1928. (The Merriam Report is highly recommended reading for those interested in Federal Indian policy.)

John Collier was intent on retaining the Indian land base. The Bureau and the Indian Reorganization Act stopped trust to fee sales and fee patents. Individuals, then went to Congress for private legislation and fee patents were issued which bypassed the Bureau policy. In the early 1950s two events occurred that impacted on Indian landowners. Dillion Meyer became Commissioner of the Bureau of Indian Affairs and Congress passed House Concurrent Resolution 108 which stated that the sense of Congress was to terminate Federal control of Indian reservations. Tribes were to prepare termination plans and if not the Bureau would prepare such plans for them. The current organization of the Branch of Realty developed during that era to handle large scale public sales of Indian lands. The Branch of Appraisals was formed and land sales and fee patents were encouraged because the Bureau could give these services before termination of the trusteeship of the reservations.

Due to the opposition of many tribes and public opinion, the pendulum swung back toward restricting trust to fee actions under the Eisenhower Administration and was continued by the Kennedy Administration.

When Robert L. Bennett became Commission in 1968, he stressed self-determination and supported tribes in limiting wholesale trust to fee operations. The Bennett policy discouraged trust to fee actions and encouraged fee to trust actions where this was the policy of the local tribe. Most of the tribes supported the policy.

There are some pressures which continue to affect land sale policy:

1. The individual who wants to sell his land regardless of local policy because he needs the money, wants to invest it, avoid special heirship problems, etc.

2. The tribe does not want any land to leave trust ownership and desires to enlarge the present reservation land base.

3. Local economic pressures creating a demand for farmland, homesites, commercial sites, etc.

4. Local government wanting enlargement of tax base.

5. The effect of transfers of land in administration of law and order, land use control, public services (landfills, etc.), public utilities, etc.

6. Political groups who favor or oppose the continuation of the reservation system.

Present Land Sale Policy. The present land sale policy is designed to meet all of the above concerns. The policy favors supporting the local tribal government while giving consideration to all other pressures. Tribes with money and a willingness to purchase land can resolve many problems by providing a market for the sellers.

Credit programs have also provided markets for keeping and adding trust land to the reservation land base by individual and tribal purchases.

25 CFR 151 and 152 and the Land Consolidation Act of 1983 as amended (96 Stat. 2515), represent the foundation of present land sale policy. The Bureau recognizes its trust responsibility to the Indian landowners to provide him with full knowledge of his lands, its uses, potential and rights. In the case of incompetent owners, further protection is afforded.

Tribes are encouraged to develop programs for land purchase. Further discussion of this will be included under inheritance problems.

Results of Indian Land Policy. As stated earlier, the result of the General Allotment Act was reduction of the Indian estate from 150,000,000 acres in 1880 to approximately 52,000,000 acres. Some small reservations were eliminated and land sales created a checkerboard pattern of ownership on many reservations. The checkerboard pattern resulted in problems such as:

1. Rights-of-way on some timbered reservations.

2. Access to water holes and rights-of-way on some range lands.

3. Absentee landowners who do not make direct use of the land and/or who know little about it.

4. Units of ownership of tracts below operating size on range, forest and dry farm land.

5. It has intermixed Indian and non-Indian operating units. In some cases this has helped the Indians by providing modern role models. However, in many cases Indian people were not acculturated to meet this competition and did not participate in the advancing economy.

6. Checkerboarding raised land values. Many of the Indian operators were unable to operate under these prices.

Heirship

The heirship process for non-Indians and Indians is similar. When a non-Indian dies, the case goes to a state court. If the deceased has a will, the assets are distributed by the terms of that will. If there is no will, the court takes the necessary action to make a proper distribution of the interests. In resolving the case, the land is sold if the heirs do not want to use it and the funds are distributed. Land can also be sold to pay debts. The estate is partitioned if agreements can be made. One heir might get cash and another land. Problems tend to be resolved at that time otherwise face costs of administration and possible loss of land for taxes.

Inheritance of Indian Land. When an Indian person dies the Secretary of Interior, in the person of the Administrative Law Judge, is responsible for determining the heir of the estate in accordance with laws of succession of the state where the property is located. In addition to determining heirs, the only other action of the Administrative Law Judge is determining indebtedness against the estate, if any. In the cases where there is no will the Administrative Law Judge's responsibility becomes complicated.

When the Administrative Law Judge completes his order, the balance of the administrative process of the probate is turned over to the Bureau's Branch of Real Property Management for disposition.

The similarities between the settlement of estates between Indians and non-Indians ends with the determination of heirs. Indian land cannot be sold for taxes and the BIA bears the cost of administration.

Indian inheritance problems are encompassed within the framework of the trust estate. Title is in trust and cannot be alienated thereby causing a geometric proliferation of heirs. In Indian Country it is not uncommon to have land interests with least common denominators in seven figures. The inherited interests in themselves generate many administrative problems for the trustee and use and value problems for the owners.

Indian heirship is a unique and complex management problem for Realty and impacts on excessive administrative costs, ownership problems, and sub-surface interests which require long term record keeping and so on.

Dealing with Inheritance Problems. Throughout the history of Indian land ownership, the Federal Government has devised a number of approaches to deal with the complexity of heirship problems through legislation.

Act of June 10, 1910 (255 USC 372). This Act authorized the Secretary of Interior to probate Indian lands. it also provided for the sale of land of incompetent heirs, partitionment of the land, and issuance of fee or trust patents.

The major result of the Act of 1910 was to increase land sales. It helped ameliorate the heirship problem but created other problems.

The Murray Report. In the late 1950s, then Senator Murray of Montana chaired a Congressional Committee to make a detailed study of the heirship problem.

The Murray Report did not produce any legislation but provided a firm statistical base to the problem and Congress searched for a solution from that point forward.

Bennett Era - Omnibus Act. Commissioner of Indian Affairs, Robert L. Bennett, presented a volume sized bill to Congress. This proposed legislation was commonly referred to as the Omnibus Act. Some of the features of the bill included:

1. Land that produced $100 a year or less would escheat.

2. Authorized real estate syndication of trust lands whereby owners of individual tracts would trade their real property interests for stock in a syndicate of a group of allotments.

3. Liberalize the percentage of owners needed to approve a land sale.

The purpose of this proposed legislation was to curb the heirship problem. Tribes throughout the country did not respond favorably to the Omnibus Act and no legislation resulted.

The Act of January 12, 1983, as amended by the Act of October 30, 1984. This is the first legislation introduced and passed by the Congress to deal with the heirship problem in a comprehensive way. Features of the Act are:

1. Interests of 2% or less and those which are incapable of earning less than $100 in any one of the five years from the date of decedent's death will escheat to the tribe.

2. Authorizes tribes to adopt special heirship laws. This gives tribes the authority to purchase the interests of non-members and non-Indians during the probate process. This can prevent mixed ownership of fee and trust property in the same tract as well as eliminate the proliferation of undivided interests. Both of these sections deal with the heirship problem at the ideal time - at the time of an ownership change. The Act also provides for escheatment to the tribe of intestate inherited interests of non-members.

3. Tribes may purchase land within its own reservation with consent of over 50% of the ownership interests.
4. It authorizes tribes to buy and exchange land but requires that proceeds from sales must be used to buy other lands.

5. Section 5 of the Indian Reorganization Act will now apply to non-IRA tribes unless it runs counter to previously enacted Federal law.

NOTE: The constitutionality of Sec. 207 of the above Act has recently been tested in the 8th Circuit Court of Appeals (Irving v. Clark, No. 84-1094). The case involved several tribal members who were precluded from inheriting certain fractional interests in allotted trust land. On March 29, 1985, the Court of Appeals reversed an earlier District Court ruling and declared Sec. 207 in violation of the Fifth Amendment, thus unconstitutional. On July 26, 1985, the Justice Department filed an appeal with the Supreme Court.

CHAPTER I

HISTORY, AUTHORITY AND METHODS OF SALE OR TRANSFER OF INDIAN LAND

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(1) Acquisition and Disposal as it relates to individual and tribal land interest includes the sale, purchase or other means of transferring ownership interest in land.

(2) The Acquisition and Disposal responsibilities of the Branch of Real Property is basically that of a real estate agent, escrow agent and a county recorders office for Indian real estate transactions.

(3) The trust responsibility of the United States with regard to Indian land started in the Colonial period when English laws and practices held that title to newly discovered land was with the English Crown but subject to a compensable right of occupancy to the aboriginal people.

(4) During the 1850's, the division of tribal lands and the efforts to terminate tribal existence through the allotment process assumed a pattern for breaking up tribal estates. This matter of acquisition of land by individuals during the treaty making period served as models for legislation that led up to the General Allotment Act.

(5) The use of the tribal estate by individual Indians and the recognition of such a "right" served as a basis for assigning land and this, combined with other "nation interests", expedited the allotment efforts.

(6) During the Post Civil War Allotment Era there was a belief that self-sufficient, self-government, development of reservation economies along with removing legal barriers which hinder growth would serve as a stimulus to the Indians.

(7) The Indian Reorganization Act ended the Allotment Era and authorized the Secretary to acquire lands in trust on reservations which accepted the IRA and was designed to prevent the alienation of Indian lands.

(8) 25 CFR 152 and the Indian Land Consolidation Act of 1983 (ILCA), as amended, represent the foundation of the present land sale policy. The United States through the Bureau of Indian Affairs recognizes its trust responsibility to the Indian landowners to provide him with full knowledge of his lands, its uses, potential and rights.

(9) The purpose of the Act of January 12, 1983, as amended, is to allow Indian Tribes to (1) consolidate their tribal landholdings; (2) to eliminate certain undivided fractionated interest in Indian trust or restricted lands; and (3) to keep trust or restricted lands in Indian ownership by allowing tribes to adopt certain laws restricting inheritance of Indian lands to Indians.

(10) The primary purpose of the Indian Land Consolidation Act is to facilitate consolidation of tribal lands and reduce the numbers of small fractional interests in individually allotted lands.

Chapter 2

Session Two - Conveyances of Indian Land

Course Outline - Session Two

- I. Conveyance Instruments
  - A. Deeds
    - 1. Warranty
    - 2. Quit Claim
    - 3. Requirements of a valid deed
  - B. Patents
  - C. Orders Determining Heirs
- II. Instructions for Drafting and Execution of a Deed
  - A. Designation
    - 1. Grantor
    - 2. Grantee
    - 3. Consideration
    - 4. Description
    - 5. Authority, liens and exceptions
  - B. Deeds Used, IRA, Non-IRA
- III. Exhibits of Forms Used in Sales, Deeds and Patents
- IV. Mortgaging Indian Land

Learning Objectives. Participant should:

1. Know and understand the various means of conveyance of Indian land title and the requirements of a deed.

2. Know and understand how to complete a valid deed with the variations needed on Indian land.

3. Know and understand the forms used in circumstances warranting issue of fee patent and land sales.

4. Know and understand the procedure of mortgaging Indian land and loss of title by foreclosure.

Conveyance of Indian Land

Webster's New World Dictionary defines conveyance as "the transfer of the ownership of real property from one person to another" and "the document by which this is effected; deed."

In this session on Conveyance of Indian Land, the subject under discussion is related specifically to the Indian landowner, an individual or the tribe, and how a transfer of ownership is accomplished and the documentation that is needed to finalize the action.

Conveyance Instruments

The primary task of the Branch of Real Property Management is to meet all of the legal requirements for the transfer (conveyance) of Indian land. To do this requires a document that can be recorded and contains all of the essential information, such as the name or the entity that is the present owner of the property, the name or entity that is to receive the property, an accurate description of the property and the authorizing signature representing the present owner. The conveyance document takes several forms, among which are warranty deeds, quit claim deeds, patents and orders determining heirs.

Deeds. A deed is a legal instrument used for the conveyance of land. It includes, as a minimum, the name of the present owner (grantor), the name of the entity acquiring the land (grantee), the value received for the transaction (consideration), the specific location of the land (legal description), and the signature of the grantor (execution). Most BIA deeds cite the authority for the transaction.

1. Warranty - The deed form used by the BIA (Form 5-5446, Deed to Restricted Land, Handout II-1) is identical to the warranty deeds used for non-Indian lands. This form is used when there are no doubtful land title problems (clouds on the title) and when the conveyance has direct authorization by an Act or Acts of Congress. In a warranty deed, the owner guarantees a clear title as well as the following:

a. He or she owned the property in fee simple at the time of conveyance and can lawfully convey the property described.

b. The property was free and clear of all encumbrances except those mentioned in the deed.

c. The grantor convenants for quiet enjoyment of the property conveyed. The grantee or those subsequently claiming title under him will not be evicted or disturbed by anyone having a better title (or unlisted encumbrance) as of the date of the grantor's conveyance.

It should be noted in the case of acquiring fee land with the proceeds from the sale of trust lands Form 5-5449 was used on non-IRA reservations.

2. Quit Claim. The quit claim deed is used when there are problems with the title (clouds on the title), descriptions or to clear title defects. The deed conveys whatever interest the grantor may have in the property and does not have to state fractional interests, restrictions, etc. The grantor does not guarantee the title, therefore, there is no warranty in the deed.

3. Requirements for a Valid Deed. Simply stated a valid deed must be dated, signed and have all the blanks on the form properly completed. The items to be included on the deed form are the date, the names of the grantor and grantee, the consideration, the legal description, the authorities, liens, exceptions and must be properly notarized.

Patents. For the purpose of this training session, three types of patents are discussed in relationship to ownership of Indian lands. These patents are (1) trust patents, (2) fee patents, and (3) restricted fee patents.

Patents are instruments which represent a grant of title to a tract of land. Such patents are granted by the United States and preparation of patents are done by the Bureau of Land Management.

1. Trust Patents. The instrument which validated most of the original allotments was a trust patent which provides that the land is held in trust for the allottee by the United States of America. Trust patents are still used for forced partitions under the 1916 Act and will be discussed in that portion of the session covering partitions. Land held under trust title cannot be taxed and cannot be encumbered or sold without the approval of the Secretary of the Interior or his authorized representative.

2. Fee Patents. Most of the patents issued today in Indian

necessary for the document to be complete and legally binding.

A deed form to be complete must include the following and be reviewed with the class in detail along with information from related personal experiences.

1. Date
2. Designation of Grantor
3. Designation of Grantee
4. Address of the Grantee
5. The Consideration Clause
6. The Land Description
7. Plural and Singular Word Forms
8. Deletions
9. Signatures
10. Deeds Conveying Fractional Interest
11. Acknowledgements
12. Signature of the Spouse
13. Authority Clause
14. Irrigation Lien Clause
15. Reservations and Exceptions
16. Citation of Reservations in Patents
17. Citations of Reservations in Previous Conveyances

Also the following items from 52 BIAM 2, Exhibit 3, should be reviewed with the class.

1. Restricted Fee, Definition of:
2. Restricted Fee, Creation of:
3. Restricted Fee, Conveyance of:

4. Deed to Restricted Indian Land Special Form 5-5447
5. Life Estate, Definition of:
6. Life Estate for Life of Grantor, Creation of:
7. Estate of Life of the Grantee, Creation of:

Deeds Used, IRA and Non-IRA. The requirements for land sales differ between IRA and non-IRA reservations because of the language in the legislation. This language resulted in the need for the use of different deed forms.

On IRA reservations Form 5-5446, Deed to Restricted Indian Land, covers land transactions when all of the owners have agreed to a sale. The conveyance is authorized by the Act of June 18, 1934 (trust to trust), (49 Stat. 985; 25 USC 465) and the authority to approve is the Act of May 14, 1948 (trust to fee), (62 Stat. 236; 25 USC 483). A sale of land to the tribe with less than full consent of the owners is authorized by the Act of January 12, 1983 (96 Stat. 2515) as amended by the Act of October 30, 1984. In this situation, the deed is signed by a properly authorized Bureau official.

On non-IRA reservations, Form 5-5446, Deed to Restricted Land, is used on all sales to a tribe or individuals when there is full consent of the owners. The authority for such sales is the Act of January 12, 1983. Prior to the 1983 Act, Form 5-5446 could be used only when the sale was authorized under an annual appropriations act and with the full consent of the grantors. The 1983 Act also provides for conveyance of land to non-IRA tribes when there is less than full consent of the owners.

Deed Form 5-5447, Deed to Restricted Land Special Form (Handout II-D), is mainly for the sale of Public Domain allotments involving individuals for trust to trust conveyances when full consent of the owners is obtained.

Orders transferring inherited interests are used when land is conveyed from trust to trust to a tribe when the tribe is authorized to buy land. The Secretary has the authority to make such conveyances under the 1910 Act when (1) there is less than full consent, (2) the land is an inherited allotment and (3) there is an incompetent heir. (A minor is a legal incompetent). The sale must be in the best interests of the incompetent heir. The 1910 Act does not indicate that consent is needed.

Form 5-5449 is used for purchasing land with the proceeds of the sale of trust lands. The form is less important since the passage of the Act of January 12, 1983.

Exhibits of Forms Used in Sales, Deeds and Patents

The following forms used in sales, deeds and patents are used by the Bureau of Indian Affairs for conveyances. Each Form is summarized and a copy of the form is attached in Handout II-E.

Forms may vary from location to location and area to area. For the purpose of this session, the instructor should use the appropriate forms and discuss the purpose and use of the forms.

1. Form of letter to Bureau of Land Management requesting issuance of a fee patent to allottee is usually prepared at the Agency. Note that this form can be adapted to heir, devisee or purchaser.

2. Order removing restrictions is used for removing the control of the Secretary from restricted deeds and some restricted fee patents.

3. Form 5-5404. Application for Patent in Fee for Sale of Indian Land. This is a very useful form and can be used for other types of transactions such as purchases and exchanges.

4. Consent to Sale Form 5-5402. This form is used after an application is received to get the consent of the other heirs. It is used for the "order transferring inherited interests." This form could be adopted to be used with the January 12, 1983 Act.

5. Order transferring inherited interest is used where the 1910 Act is applicable and only to non-IRA tribes and allotted land heirship status with at least one incompetent heir. The tribe must have authority to purchase and could be used by an individual if there is authority to purchase.

6. Form of letter to Bureau of Land Management requesting issuance of fee patent to purchasers.

7. Form of letter to Bureau of Land Management requesting issuance of trust patents in partitioning allotments. This is

used with the authority of the 1916 Act.

8. Report on Sale of Indian land is used for advertised bid sales to summarize the bids received for a tract.

9. Form 5-5417, Invitation, Bid and Award along with Form 5-5416 Schedule of Lands to be Sold. This is the form which is distributed as an advertisement for a public land sale.

Mortgaging of Individual Trust Land

The Act of March 29, 1956, authorized individual Indians, subject to approval of the Secretary, to execute a deed of trust on trust or restricted land.

The mortgaging of trust land is handled by the Branch of Credit in cooperation with Realty personnel. The Agency should request a land status report to determine if the tract involved is the sole ownership of the mortgagor. The mortgage and approval should be recorded in the title plant to prevent a sale made during the life of the mortgage.

The process of mortgaging is mentioned under conveyances because it could become a conveyance should foreclosure occur. Tracts in multiple ownership should not be considered eligible for mortgaging. Further questions on the procedure and qualifications necessary to mortgage trust land should be referred to credit staff.

Chapter 2

Conveyances of Indian Land

T or F

(1) A deed is a legal instrument used for the conveyance of Indian land. As a minimum, the deed requires, the name of the present owner (grantor), the name of the entity acquiring the land (grantee), the value received for the transaction (consideration), the specific location of the land (legal description), and the signature of the grantor (execution).

(2) A Warranty deed is used when there is doubt as to the land title (clouds on the title) and when the conveyance has direct authorization by an Act or Acts of Congress.

(3) A Quick Claim deed is used when there are problems with the title, descriptions or to clear title defects.

(4) The requirements for a valid deed are: must be dated, signed and have all the blanks on the form properly completed. The items to be included on the deed for are the date, the names of the grantor and grantee, the consideration, the legal description, the authorities, liens, exceptions and must be properly notarized.

(5) Three types of patents were discussed in relationship to ownership of Indian lands, they are (1) trust patents, (2) fee patents, and (3) restricted fee patents.

(6) Patents are instruments which represent a grant of title to a tract of land. Such patents are granted by the United States and issuance of patents are done by the Bureau of Indian Affairs

(7) lands held under trust title can be taxed and encumbered as well as being sold without the approval of the Secretary of the Interior or his authorized representative.

(8) The requirements for land sales differ between IRA and non-IRA tribes because of the language in the legislation.

Chapter 3

Session Three - Review of Regulations (25 CFR 152)

Course Outline - Session Three

I. Issuance of Patents in Fee and or Removal of Restrictions
  - A. Policy
  - B. Factors to be Considered
  - C. Authority
  - D. Procedures

II. Sales or Conveyance of Individual Interests
  - A. Regulations (152.17 through 152.32)
  - B. Procedures

III. Partition of Inherited Land
  - A. Policy
  - B. Authority
  - C. Procedure

IV. Five Civilized Tribes-Allotted Land
  - A. Removal of Restrictions
  - B. Sales

V. Gift Conveyances

Learning Objectives. Participant should:

1. Know and understand the consideration given and procedures followed in the issuance of patents in fee and removal of restrictions.

2. Know and understand the sales procedures and applicable regulations in the sale of individually owned interests.

3. Know the procedure and understand the purposes served in partitionment of inherited land.

4. Know and understand the procedures and conditions under which removals of restrictions are made on land owned by an Indian of the Five Civilized Tribes.

Review of Regulations

This section on Acquisition and Disposal deals with the review of regulations contained in 25 CFR 152 (Handout III-A). These regulations serve as the "bible" for Real Property Management staff for conveyance of Indian land. In this session, the regulations will be reviewed and explained. The focus of attention in this session deals with the conveyance of land owned by individuals. The sale of tribal land is somewhat of a rarity therefore, even though the the procedure would be similar, no attempt will be made to discuss tribal land sales. The Code of Federal Regulations, 25 CFR 152, should be read by each trainee before and after this session to gain greater understanding of the content and meaning of the regulations.

Issuance of Patents in Fee-Removal of Restrictions

Patents in fee, certificates of competency and removal of restrictions provide a means by which Indian landowners can sell, use or lease property free of Federal control. The Bureau's policy, factors to be considered, authority and procedures for removal of restrictions is found in 54 BIAM 2 (Handout II-B).

It is the policy of the BIA to give patents in fee, certificates of competency and orders removing restrictions when adult Indian owners make application for such. If there are extenuating circumstances such as the land being a key tract, and a sale would adversely affect tribal interests, the Bureau will negotiate with all interested parties to resolve the issue. If the issue cannot be resolved, the matter is referred to the Area Director for final action. It is also the policy to not grant patents, etc., for individual interests except for non-Indians and alien Indians.

Factors to be considered. Factors to be considered in issuance of documents pertinent hereto relate primarily to the individual's ability to manage his own affairs competently. The matter of competency has always been a "judgment call" on the part of Bureau decision makers and much time and study has been given to the subject. Legislation defines competency and guidelines for granting patents, etc. The final decision documents and findings required to issue a patent, certificate of competency or removing restrictions must be documented in writing.

Authority. The authorities for the issuance of patents in fee, certificates of competency and removal of restrictions on purchased lands held under restricted deed are detailed in 54 BIAM 2.

Procedures. The procedures for issuing fee patents, certificates of competency and removal of restrictions are outlined in 54 BIAM 2 and all require an application from the landowner. The procedures also outline the actions required by the Superintendent, Area Director and the Central office. Included are provisions for appeals as set forth in Chapter 2.1, 54 BIAM.

Sales or Conveyance of Individual Interests

The Bureau's trust role surfaces when a land sale is under consideration. As the trustee, the Superintendent or the Area Director, is exercising his trust responsibility at this time. The Branch of Real Property management must take the role of the trustee into consideration when doing the necessary staff work on a sale. The trustee must protect the seller (the Indian landowner) to assure him of the maximum return on the sale, and if in fact, the sale should be made at all.

The Realty staff's responsibility is to process the documents in a timely manner, protect the rights of all parties involved and to make sure all of the paperwork is accurate and legal.

Regulations 152.77 through 152.32. The regulations Bureau of Indian Affairs Real Property Management staff are required to use for the sale of Indian land are found in 25 CFR 152.17 through 152.32. These regulations set forth the authorities, requirements, and procedure for sales.

The detailed review of 25 CFR 152.17 through 152.32 should be made at this point in the training session with an analysis to create an understanding of the meaning, intent and purpose of the regulations.

Procedures. The procedures for the sale of individually owned land are detailed in 54 BIAM 2 (Handout II-B). The manual adequately provides guidance to the Bureau employee for the processing and completion of a land sale. The procedures are summarized as follows:

1. Application - The owner makes application for a sale on Form No. 5-5404, Application For Patent In Fee Or For The Sale Of Indian Land. The procedures suggest that sales of partial ownership to non-trust should not be made.

   a. Title status reports are to be obtained.

   b. The Bureau has the responsibility to decide if the sale is in the best interests of the owners. This should be covered by a covering memorandum.

   c. An appraisal is required.

   d. In the event of a disapproval of a sale, the applicant is notified and advised of his appeal rights.

   e. The tribe and tribal members are to be notified to provide an opportunity to negotiate or to get preference on a bid sale.

2. In the event of an advertised sale, a statement is to be made by the Superintendent that the sale is in the best interest of the applicant and that he was notified that he can retain the mineral interest. An appraisal and title status report must be obtained and a notice of preference rights must provide a statement on the minimum price acceptable. Form No. 5-114, Invitation, Bid and Award, is used for an advertised sale. The Bureau should not help buyers in preparing bids. When bids are opened and an auction conducted, it should be done in a businesslike manner. The procedures for conducting an oral auction are outlined in the manual.

3. The instruments of conveyance used are Deed Forms 5-5446, 5-5449, 5-5447 or Orders Transferring Inherited Interests. Fee simple titles should be issued on Form 5-5446 or a patent in fee.

4. After the sale is made the offer, if acceptable, is made to the owners. Upon acceptance, a deed is prepared and signed. The file is assembled according to 54 BIAM 2.231 and includes any reservation against the title.

5. At this point the sale is approved by the Secretary's designated representative, filed and payment made.

Partition of Inherited Land

The Allotment systems produced individual Indian land ownership. The death of landowners usually occurred without the owner having a will. The heirs to these estates all received undivided interests in the land. This situation became the rule rather than the exception in Indian Country. The main feature of this heirship ownership is that each heir owns his interest in common, with all the others. In fact, he does not own any particular piece of property. He owns his determined share as a part of the total.

The desire to use an interest can be done by mutual agreement of the owners but this does not always result in a satisfactory use right. The method used in resolving this problems is to divide the undivided interest and determine the specific piece of land to be owned by one or more of the heirs. The process used to divide the interests of heirs is partitionment.

A definition for partitionment is a division of land between those that own it in undivided shares.

Policy. The general policy of the Bureau of Indian Affairs as it relates to the partition of Indian lands is found in 54 BIAM 2.3.2. This policy states that a partition of the inherited lands should be made only if it is advantageous to all concerned. The policy recommends that partitions should be limited to divisions into two or more tracts of sufficient value and to obtain title to separate tracts to reduce or limit fractional interests. Partitions should also be confined to tracts on which the owners want to make improvements that are suitable for real estate subdivisions and in which an undivided interest is held in unrestricted status.

Authority. The authority to partition inherited allotments on non-IRA reservations is found in 25 CFR 152.33. The authority stems from the Act of May 18, 1916, and the Act of June 25, 1910. The authority to partition inherited allotments on IRA reservations is the authority that allows for the sale of land found in the 1934 Act and the 1948 Act. Non-Indian interests can be partitioned under the 1916 Act without consent as determined in February 14, 1973, Solicitor's Opinion by William A. Gershuny.

Partitioning requests on non-IRA reservations under the authority of the Acts of 1910 and 1916 may be considered with less than unanimous consent. Partitioning requests on IRA reservations pursuant to Sampson v. Andrus (483 F. Supp. 240) may now also be considered with less than unanimous consent.

There is no authority to partition lands held under restricted fee status, however, a partition may be accomplished by all heirs exchanging deeds.

Procedures. The procedures for processing a partition. are found in 54 BIAM 2.3.3. For the purpose of this session, the procedures are summarized here.

A Petition for Partition of Inherited Indian Land, Form No. 5-5414, is executed by the heirs or devisees of a deceased allottee when they want to divide the property. At this point, it is understood that all parties have agreed to the division. Any owner who wants a fee simple title for his interest makes application for same on Form 5-5404. The Bureau provides every means possible to help get a suitable and equitable division. The tract must be appraised for each parcel. Any variances in value must be understood and resolved by the owners.

After all of the issues needed are resolved and understood, the Superintendent submits the following documents to the Area Director.

1. Petition for Partition
2. Appraisal Reports
3. Land status report and abstract of heirship findings
4. Certificates of Indebtedness
5. Statements of construction, operating and maintenance charges, if within an irrigation project
6. Letter of transmittal with Superintendent's recommendation and ancillary information.

When the Area Director receives the Petition for Partition and the review and approval is made, it is forwarded to Bureau of Land Management for issuance of the proper patents. At this time the documents are properly recorded and distributed.

If deeds are used and approved by the Area Director, they are properly recorded and deeds issued to the owners by the Superintendent.

Five Civilized Tribes - Allotted Land.

The laws governing Indians in Oklahoma and the Five Civilized Tribes in general are voluminous and extensive. In general the statutes and legal principles of laws applying to Indians are generally applicable. In the case of the Five Civilized Tribes, the subject under discussion for this land relates to the conveyance of land titles.

The general policy of the Federal Government was to allot tribal land in severalty with certain restrictions on alienation of the allotments and to confer citizenship on the allottees. The Dawes Commission undertook negotiations with the Five Civilized Tribes for that purpose but were unable to reach agreement with these tribes. Congress decided to proceed with allotment without the consent of the tribes through the Curtis Act or the Act of June 28, 1898.

Basic statutes controlling alienation and taxation of lands of individuals in the Five Civilized Tribes are:

Removal of Restrictions 25 CFR 152.10 - 152.16. Part 152 of the Code of Federal Regulations details items regarding Issuance of Patents, Certificate of Competency, Removal of Restrictions and Sale of Certain Lands. For the purpose of this session, reference is made to Osage Indians and emphasis placed regarding the Five Civilized Tribes. In both instances, conveyance matters follow similar procedures outlined previously in this training manual. Where necessary, the text should be modified by the instructor when Osage or Five Civilized Tribes conveyance matters are of primary interest.

Sales. 54 IAM 2.4.1. - 2.4.5 detail the policy, procedures and authority for removal of restrictions and sales and procedures for removal of restrictions and sales.

These sections of the manual should be reviewed with the trainees for familiarization purposes only unless the training is being conducted for Osage or Five Civilized Tribes interests.

Partitioning. Partitioning is handled through the Oklahoma State Court system.

Gift Conveyances. 25 CFR 152.25(d) allows for gift conveyances to be made between certain individuals for less than fair market value. It should be noted, that a conflict exists between this provision and 25 CFR 151.7. Eligible recipients of a gift conveyance under 152.25(d) may not in certain instances be eligible recipients under the acquisition regulations (25 CFR 151.7). This conflict has become even more pronounced since the passage of the Indian Land Consolidation Act. At the present time, the regulations are being revised to resolve this problem. In the meantime, you should be aware that the Central Office will accept a waiver to 25 CFR 151.7 if it can be shown that the conveyance is in the best interest of the grantor.

Chapter 3

Review of Regulations (25 CFR 152)

T or F

(1) Patents in fee, certificates of competency and removal of restrictions provide a means by which Indian landowners can sell, use or lease property free of Federal control.

(2) It is the policy of the Bureau of Indian Affairs to approve all applications for patents in fee, certificates of competency and orders removing restrictions when an adult Indian owner makes application for such.

(3) The Bureau of Indian Affairs as trustee must protect the seller (the Indian landowner) to assure him of the maximum return on the sale, and if in fact, the sale should be made at all.

(4) The regulations Bureau of Indian Affairs Real Property Management staff are required to use for the sale, exchange, and conveyances of trust or restricted Indian lands are found in 25 CFR 152.17 through 152.32.

(5) A method used to divide the undivided interest and determine the specific piece of land to be owned by one or more of the heirs in an allotment is to partition the land.

(6) A petition to partition is presented pursuant to policy and procedures for processing a partition as found in 54 BIAM 2.3.3.

(7) Any Indian 21 year of age or over may apply for a patent in fee for his trust land. A written application shall be made in the form approved by the Secretary and shall be completed and filed with the agency having immediate jurisdiction over the land.

[illegible]

Chapter 4

Session Four - Regulations on Acquisition

Course Outline - Session Four

I. Authority to Take Land Into Trust Status
   - A. Reinvestment of Trust Funds
   - B. Indian Reorganization Act
   - C. FmHA Funding Limitations
   - D. Indian Land Consolidation Act
   - E. Indian Financing Act
   - F. Indian Self-Determination Act

II. Regulations Governing Land Acquisition
   - A. Purpose and Scope
   - B. Procedures

III. Policy Statement on Acquiring Land in Trust

Learning Objectives. Participant should:

1. Know and understand the limitations placed by legislative authority in the taking of land into trust status.

2. Know and understand the new regulations governing the policy and procedures to be followed in taking land into trust status.

3. Know past policies of the Bureau of Indian Affairs in limiting the taking of land in trust status.

Regulations on Acquisition

This session is a review of 25 CFR 151. These regulations set forth the authorities, policies and procedures governing the acquisition of land by the United States in trust status for individual Indians.

Reinvestment of Trust Funds. The Act of March 2, 1931, (46 Stat. 1471) as amended by the Act of June 30, 1932 (47 Stat. 474; 25 USC 409a), authorizes the Secretary to reinvest funds from the proceeds of a trust sale for the purchase of land. Land so purchased, can then be acquired in trust status and shall have the same degree of trust as the land sold.

To purchase land in trust, Form 5-5447, Deed to Restricted Indian Land Special Form, must be used. The authority to make these transactions has been affirmed by a court decision (United States v. Chinberg, et al., 224 F. 2d 177).

Indian Reorganization Act. Section 5 of the Act of June 18, 1934 (48 Stat. 984; 25 USC 465), the Indian Reorganization Act, authorizes the Secretary of Interior to purchase lands for individuals and tribes organized under the provisions of this Act. The funds for such purchase may be from any source.

FmHA Funding Limitations. Act of April 11, 1970 (24 Stat. 120; 25 USC 488-489), authorizes Farmers Home Administration loans to tribes for the purchase of land. Funds available from FMHA can be used to purchase either fee or trust lands. Fee purchases can be placed in trust. Limitations for such purchases require that land must be located within the boundary of the reservation or be bordered on two sides by trust land.

ILCA - Indian Land Consolidation Act. Act of January 12, 1983 as amended (25 USC 2202), Section 203 makes the provisions of Section 5 of the IRA applicable to all tribes unless it would contradict other federal law.

Indian Financing Act of 1974. Act of April 18, 1974 (88 Stat. 77; 25 USC 1466). Title I - Indian Revolving Loan Fund Section 101 allows the Secretary to make loans to Indian tribes for purchasing lands. Lands may be taken in trust inside the reservation boundaries or within a "tribal consolidation area".

Indian Self-Determination and Education Assistance Act. Act of January 4, 1975 (88 Stat. 2207 and 2208; 25 USC 450), Section 104(a)(3) authorizes the Secretary of the Interior at the request of the tribe, to contract or make a grant for acquisition in trust of land. Land must be within present boundaries or adjoining other trust land.

Regulations Governing Land Acquisition

The regulations for the acquisition of land are found in 25 CFR 151. The implementation of these regulations is set forth in the memorandum dated November 3, 1980, to all Area Directors from the Secretary of the Interior to provide additional guidance for land acquisition pending the drafting and release of a BIAM manual release. (Handout IV-A).

Purpose and Scope. The regulations set forth authorities, policy and procedures governing land acquisition by the United States in trust status for individual Indians and tribes. Acquisition of land by individual Indians and tribes in fee simple status is not covered by these regulations even though such land may, by operation of law (25 USC 177), be held in restricted status following acquisition. Acquisition of land in trust status by inheritance and escheat is not covered and neither is acquisition of land acquired in trust status in the State of Alaska, except Metlakatla.

The Bureau of Indian Affairs had to develop regulations to meet the demand for patents that resulted in land sales. This set the pattern for policies and procedures for the sale of trust land. These regulations had limited reference to purchasers but only to the extent that it impacted the seller. In all cases, the buyer had be to an Indian and in some cases had to have trust funds. It did not set policy for the purchaser and totally ignored fee to trust sales. It did allow, by inference, exchanges and partition. New regulations, now in effect, for land acquisition were published in the Federal Register on September 18, 1980. These new regulations provide for acquiring land in trust and are slanted to the purchaser. In trust to trust sales, both the disposal regulations in 25 CFR 152 and the acquisition regulations in 25 CFR 151 must be followed for a proper transaction. In fee trust sales, only the acquisition regulations are used.

Procedures (25 CFR 152). The procedures for trust to trust purchases have been covered in the disposal portion of this session.

Procedures (25 CFR 151). The procedure for fee to trust is listed in 25 CFR 151 (Handout IV-A) and supplemented by Implementation Instructions issued on November 3, 1980 (Handout IV-B) to all Area Directors. These regulations are summed up as follows insofar as procedure is concerned.

An application is required from the purchaser be it either tribe or individual. No special form is required, however the request should, at minimum, address the seven factors listed in 25 CFR 151.10 (p. 44). The application is submitted to the Agency which in turn will send a request for comments to the local jurisdiction (town, county, etc.). The comment period is 30 days. If comments received are of a positive nature, the request will then go forward with a recommendation from the

Superintendent to the Area Director for review and in certain instances for a final decision.

It should be noted, the Area Director is the final decision maker on all on-reservation fee to trust requests. All off-reservation requests can only be approved by the Assistant Secretary - Indian Affairs.

Policy Statement on Acquiring Land in Trust.

Land acquisition policy is specifically stated in 151.3. However, additional policy on purchasing land is included throughout the regulations in 151.4, 151.7, 151.8 and 151.10.

Policy as stated in the regulations follows:

1. Fee land can only be acquired in trust status if there is Congressional authority. The acquisition must be approved by the Secretary.

2. Tribes can acquire land inside the exterior boundaries of a reservation, adjacent thereto or within a land consolidation area, where the tribe already owns an interest, or the land is necessary for tribal self-determination, economic development or Indian housing.

3. Land purchased for an individual must be within the exterior boundaries of a reservation or adjacent thereto, or the individual must own an interest in the tract.

4. Lands owned in fee may be converted to trust.

5. To acquire fractional interests, the buyer must own an interest in the tract, or interest in the tract is in fee, or the buyer offers to purchase the remaining interest at appraised value. The owners or a majority of the non-selling owners must agree to purchase or a specific law grants the buyer this right.

6. The tribe must consent to non-member acquisitions except if the non-member owns an interest in the tract.

The factors that must be considered in an acquisition (25 CFR 151.10) are:

1. The need of the individual/tribe for additional land.

2. The purpose for which the land will be used.

3. The amount of trust or restricted land already owned by the individual and the degree to which he needs assistance in handling his affairs.

4. On fee to trust purchases, the impact on the political subdivision and the removal of the land from the tax rolls.

5. Jurisdictional problems and land use conflicts.

6. Whether the BIA is equipped to discharge the additional responsibilities resulting from a fee to trust acquisition.

7. Statutory authority is required.

Another factor which is not listed in 25 CFR 151.10 but which has increased in importance, is compliance with the National Environmental Policy Act (NEPA). Fee to trust land requests which may entail some form of future construction will require that, at a minimum, an Environmental Assessment be completed.

Note: The Central Office is presently preparing to revise 25 CFR 151 and 152 in order to conform to the Indian Land Consolidation Act.

Quiz - Session Four
Regulations on Acquisition

True	False		
T	F	1.	Section 5 of the Indian Reorganization Act authorizes the Secretary of the Interior to purchase land for individuals and tribes organized under the provisions of this Act and make it a part of the reservation.
T	F	2.	A non-IRA tribe may utilize Section 203 of the Indian Land Consolidation Act to acquire land in trust notwithstanding previously enacted legislation to the contrary.
T	F	3.	An Indian tribe may use the Indian Financing Act to have lands taken into trust off-reservation as long as they are within an approved "tribal consolidation area".
T	F	4.	Fee land purchased by a tribe may be converted to trust under FmHa (Act of April 11, 1970) if the land is within the boundaries of the reservation and if it is bordered on one side by trust land.
T	F	5.	Tribe acquiring land in fee simple status must follow procedures outlined in 25 CFR 151.
T	F	6.	Tribes wishing to acquire land in trust status must submit their request to the local agency addressing the seven factors listed in 25 CFR 151.10 and complying with the National Environment Protection Act (NEPA).
T	F	7.	An individual Indian may request to have fee land to be taken in trust status 10 miles outside the boundary of the reservation by requesting the Secretary to waive the regulations found in 25 CFR 151.3(b).
T	F	8.	25 CFR 151 - Land Acquisitions and 25 CFR 152 - Sales are currently being revised to incorporate certain provisions of the Indian Land Consolidation Act (ILCA).

Handouts - Session Two

HANDOUT II-1

5-5446
(Aug. 1966)

No. ____________

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

DEED TO RESTRICTED INDIAN LAND

THIS INDENTURE, Made and entered into this ____________ day of ____________ one thousand nine hundred and ____________, by and between ____________

of ____________

Indians ________, part ______ of the first part, and ____________

____

of ____________, part ______ of the second part:

WITNESSETH, That said part ______ of the first part, for and in consideration of the sum of ____________ dollars, in hand paid, the receipt of which is hereby acknowledged, do ____ hereby grant, bargain, sell, and convey unto said part ______ of the second part the following-described real estate and premises situated in ____________ County, ____________ of ____________ on the ____________ Indian Reservation, to wit:

together with all the improvements thereon and the appurtenances thereunto belonging. And the said part ______ of the first part, for ____________ and ____________ heirs, executors, and administrators, do ________ hereby covenant, promise, and agree to and with the said part ______ of the second part, ______ heirs and assigns, that ________ will forever warrant and defend the said premises against the claim of all persons, claiming or to claim by, through, or under ____________ only.

To have and to hold said described premises unto the said part ______ of the second part, ______ heirs, executors, administrators, and assigns, forever.

IN WITNESS WHEREOF, That said part ____ of the first part ha ____ hereunto set ______ hand ____ and seal ___ the day and year first-above written.

WITNESSES:

____________________ [SEAL]
____________________ [SEAL]
____________________ [SEAL]
____________________ [SEAL]
____________________ [SEAL]

____
____
____
____
____
____

Acknowledgments must be in accordance with the forms prescribed by the State in which the land is situated.

STATE OF.. }
COUNTY OF...................................... } ss:

BE IT REMEMBERED, That on this .... day of ...., A. D. 19.....

before the undersigned, a .... in and for the County and State

aforesaid, personally appeared ....

....

....

....

....

to me personally known to be the identical person...... who executed the within instrument of writing, and

such person...... duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal on the day and year last hereinabove written.

....

....
(Title)

UNITED STATES
DEPARTMENT OF THE INTERIOR

My commission expires ....

The within deed is hereby approved:

....

The within deed is recorded in the Bureau of Indian Affairs in Volume ...., Page ...., Inherited Indian Land Deed Book.

INDIAN LAND DEED

FROM

....

....

TO

....

....

COUNTY OF..............................

STATE OF..............................

This Instrument was filed for record this

.... day of ...., 19.....

at .... o'clock .... M., and duly

recorded in Book No. ...., at page ....

....
Register of Deeds.

GPO 833-843

TERMINATION OF RESTRICTIONS ON AND CONVEYANCES OF INDIAN LAND

Section 2.1 Patents in Fee, Certificates of Competency, and Removal of Restrictions

- .1 Policy
- .2 Factor to be Considered
- .3 Patents in Fee
- .4 Patents in Fee to Lands of Adult Mixed-blood Indians within the White Earth Reservation, Minnesota
- .5 Certificates of Competency
- .6 Removal of Restrictions on Purchased Lands

Section 2.2 Sale of Allotted and Purchased Lands, Exclusive of Five Civilized Tribe Allotted Lands

- .1 Policy
- .2 Authority
- .3 Procedure

Section 2.3 Partitions of Inherited Allotments (Except as to Osage and Five Civilized Tribes)

- .1 Authority
- .2 General Policy
- .3 Procedure

Section 2.4 Removal of Restrictions and Sales of Five Civilized Tribes Allotted Lands and Purchased Lands Held Under Carney-Lacher Form Deeds

- .1 Policy
- .2 Authority
- .3 Determination of Competency and Factors to be Considered before Approving Applications
- .4 Procedures
- .5 Procedures for Sales after Issuance of Conditional Orders Removing Restrictions

Section 2.5 Recording of Approved Mortgages on Trust Land

- .1 Purpose
- .2 Procedure

2 TERMINATION OF RESTRICTIONS ON AND CONVEYANCES OF INDIAN LAND INCLUDING EXCHANGES AND PARTITIONS

2.1 Patents in Fee, Certificates of Competency, and Removal of Restrictions.

.1 Policy. Patents in fee, certificates of competency, and orders removing restrictions may be issued upon the written application of adult Indian owners. If the Indian owner is competent to manage the property for which he requests a patent, certificate, or order, the Government has no moral or equitable right to deny his application.

If the Superintendent upon investigation finds the applicant to be competent but finds that the land covered by the application is a key tract and the termination of the trust status may adversely affect the protection and use of Indian lands remaining in trust status, the Superintendent will investigate the specific effect of the alienation on the surrounding trust lands, inform the tribal officials or individual Indians of the possibilities available for working out a satisfactory solution to the problem, and assist in negotiations or other action necessary to the solution. For example, this may in some cases be simply a matter of negotiating for a stock right of way, or a right of way for access purposes, or for the construction, maintenance, and use of a logging road to remove timber. Should the tract control the source of livestock water for a grazing unit, it may be possible to acquire a stock watering permit, or it may be a matter of developing other sources of water on another part of the range. Should it be found that acquisition of the tract by the tribe or an individual Indian is the only feasible means of protecting other Indian trust lands, the Superintendent will discuss the matter with the interested parties.

If the tribe or an individual Indian wishes to acquire the land, the Superintendent will assist in negotiating with the owner to acquire the land by purchase or exchange. If negotiations fail due to the refusal of the owner to negotiate a conveyance of the land to the tribe or an Indian, or there is a lack of available funds to consummate the acquisition, the application and all accompanying papers should be submitted by the Superintendent, with his recommendations on the matter, to the Area Director.

Except in unusual cases, patents in fee, certificates of competency, and orders removing restrictions will not be issued for undivided interests in lands held in multiple ownership where other interests in the tract remain in trust or restricted status, since such action would increase the work and expense involved in administering the interests remaining under Bureau jurisdiction. This policy, of course, does not apply to the issuance of fee patents to non-Indians or alien Indians pursuant to 25 CFR 151.6.

.2 Factors to be considered. General authority for the issuance of patents in fee simple is found in the Act of May 8, 1906 (34 Stat. 182; 25 U.S.C. sec. 349), from which the following is quoted:

> "PROVIDED, That the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, . . ."

The Act of June 25, 1910, Sec. 1 (36 Stat. 855; 25 U.S.C. 372), contains the following:

> "If the Secretary of the Interior decides the heir or heirs of such decedent competent to manage their own affairs, he shall issue to such heir or heirs a patent in fee for the allotment of such decedent; if he shall decide one or more of the heirs to be incompetent, he may, in his discretion, cause such lands to be sold."

Over the years a great deal of study has been given to this subject, and various approaches have been made to determinations of competency. The most recent effort on the part of Congress to establish a yardstick for measuring competency of individual Indians is found in the Act of August 11, 1955 (69 Stat. 666), relating to the removal of restrictions from property of members of the Five Civilized Tribes. Sec. 2(a) of this act provides that an order removing restrictions "shall be issued if in the judgment of the Secretary the applicant has sufficient ability, knowledge, experience, and judgment to enable him, or her, to manage his, or her, business affairs, including the administration, use, investment, and disposition of any property turned over to such person and the income or proceeds therefrom, with such reasonable degree of prudence and wisdom as will be apt to prevent him, or her, from losing such property or the benefits thereof." The regulations issued pursuant to this act are contained in 25 CFR 152.

Precise rules cannot be prescribed for determining the competency and ability of an applicant to manage his or her own affairs. Such rules would tend to have the effect of restricting the exercise of judgment to an undesirable extent. Care must be exercised in evaluating the application for a fee patent or other action to lift the trust or remove restrictions, to the end that reasonable standards are applied in determining the applicant's competency. An applicant should not be required or expected to show in excess of the minimum acceptable normal standards in a similar non-Indian community relative to such criteria as education, experience, training, ability to support himself and his dependents, ability to protect and manage his property and make reasonable use of the income or proceeds thereof.

The Superintendent's findings as to competency, based on analysis in line with the above principles, are to be reduced to writing, indicating the specific competency factors considered and reasons for his decision.

.3 Patents in Fee.

A. Authority.

(1) Statutory. General statutory authority for the issuance of patents in fee is found in the Act of May 8, 1906, as amended (34 Stat. 182, 183; 25 U.S.C. 349); the Act of June 25, 1910, as amended (36 Stat. 855; 25 U.S.C. 372); and the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483). Special authorities, applicable to certain reservations, also are in existence.

(2) Regulations. 25 CFR 152.

B. Procedures. In the procedures outlined in this section, no attempt has been made to prescribe the number of copies of documents to be prepared for field purposes. It will be necessary for each Area to supplement the instructions to provide copies for Area and Agency purposes.

(1) Application. Any adult Indian may apply for a patent in fee for any land which is held in trust by the United States for such Indian. The application shall be made on Form 5-5404 and shall be submitted to the Superintendent of the Agency having jurisdiction over the lands. See 25 CFR 150.11 pertaining to the disclosure of information regarding the status of applications for patents in fee.

(2) Action by the Superintendent. The Superintendent shall examine the application and ascertain that the land is correctly described and that all applicable questions are fully answered. Applications containing incomplete or ambiguous statements must be returned to the applicant with a statement of the reasons therefor.

If, upon consideration of the application, and investigation, the Superintendent determines that the applicant is competent but finds that a key tract is involved, he shall take the action set out in Section 2.1.1 of this Chapter. If the applicant is found to be competent and a key tract is not involved, the Superintendent shall submit to the Area Director the following:

(a) Application Form 5-5404 approved by the Superintendent, together with written statement of Superintendent's findings of competency described above.

(b) A report showing the status of title to the land as disclosed by the Agency records. This report shall show the name of the allottee, the act under which the allotment was made, and the date of the trust patent. When the land is in heirship status, a tabulation of the probate records is to be made a part of the report. If the applicant acquired the land through means other than allotment or inheritance, the report shall indicate the type of action and instrument of conveyance by which it was acquired, and show the recording data of the Bureau of Indian Affairs. If there is need for preparation and approval of a supplemental plat by the Bureau of Land Management to accommodate the issuance of a fee patent, the report should show this fact.

(c) Statements of the construction costs and operation and maintenance charges are to be obtained from the Project Engineer or other officer in charge of such records, and submitted with the application whenever the land or any part thereof is within an irrigation project.

(d) Certification of indebtedness and unpaid probate fees affecting the land in the application.

(e) A letter, addressed to the Director, Bureau of Land Management, for the signature of the Area Director, stating the application has been approved and requesting that a patent in fee be issued to the applicant. A suggested form of the letter is shown as Exhibit No. 1 at the end of this Chapter. Specific instructions must be given to the Bureau of Land Management regarding any reservations and conditions which are to be included in the patent, particularly as to minerals, rights of way, and irrigation liens.

(f) An inventory of the estate covered by the proposed fee patent with information on relative values.

Upon receipt of the patent in fee, the Superintendent shall prepare in letter form to accompany delivery of the patent, an inventory of the estate covered by the fee patent with information on relative values, as provided by 52 BIAM 1.3D. Each fee patentee shall be informed that his property will be subject fo taxation, and shall be given the name and location of the nearest Federal, State, and other tax authority offices. He will be informed of the name and location of appropriate offices administering State laws affecting the use of his land, and will be similarly informed of other liabilities and duties inherent in the ownership of lands in fee simple.

If application Form 5-5405 is disapproved, the Superintendent shall advise by letter the basis for the disapproval of the application and advise the applicant of his right to appeal. All appeals shall be processed in accordance with 25 CFR Part 2

(3) Action by the Area Director. Upon receipt of the approved application for patent in fee and related data, the Area Director shall examine and review the matter. Upon his approval, he shall take the following action:

(a) Submit the original and one copy of the letter addressed to the Director, Bureau of Land Management directly to that Bureau, together with information as to the location of the office of record for the reservation involved in the request.

(b) Forward two copies of letter addressed to the Director, Bureau of Land Management, to the Superintendent, who shall transmit one copy to the applicant.

Whenever the Area Director disapproves an application, he shall notify the Superintendent of such disapproval and set forth his reasons for such action. The latter shall be transmitted to the

Superintendent, who will transmit a copy thereof to the applicant and advise him of his right of appeal.

Upon receipt by the Area Director of a report and recommendation on an application for a fee patent, the approval of which would seriously affect the protection and use of Indian lands remaining in trust or restricted status, and where it has not been possible to work out a satisfactory solution to the problem, the matter will be reviewed. If it is determined that all possible action looking toward a solution to the problem has been taken and that the application should nevertheless be approved, the applicant and the tribe or individual Indians adversely affected shall be notified in writing of the decision. The letter to the Bureau of Land Management requesting issuance of a patent in fee should be submitted to the Central Office with a covering letter setting forth the facts of the case.

(4) Recording and delivery of patent.

(a) Upon issuance of a patent affecting a reservation for which the Central Office is the office of record, the Bureau of Land Management will transmit same to that office for recording in the tract books by number and date. Thereafter, the patent will be transmitted to the field for delivery to the patentee.

(b) When the patent affects a reservation for which the Area Office is the office of record, the Bureau of Land Management will transmit same to the Area Office for recording and delivery.

.4 Certificates of Competency (except as to the Osage (Reservation).

A. Authority.

(1) Statutory. Section 1 of the Act of June 25, 1910 (36 Stat. 855), as amended by the Act of April 30, 1934 (48 Stat. 647; 25 U.S.C. 372).

(2) Regulations. 25 CFR .152.

(3) Explanation. Certificates of Competency are issued instead of patents in fee in those instances where the allotment patent conveyed a fee title to the Indian allottee subject to restrictions against alienation, encumbrance, or taxation. Certificates of Competency have the same force and effect as patents in fee, in that they serve to remove all restrictions against alienation, encumbrance, or taxation on the lands described therein owned by the individual named in the certificate.

B. Procedures.

(1) Application. Any Indian 21 years of age or over may apply for a Certificate of Competency for any land held by such Indian under a patent in fee, initially issued subject to restrictions against alienation, encumbrance, and taxation. The application is to be made on Form 5-5405, and shall be submitted to the Superintendent of the Agency having jurisdiction over the lands. Appropriate changes in Form 5-5405 should be made so that the references therein to "Patents in Fee" will read "Certificates of Competency" and the citation of the act should be changed to read "Act of June 25, 1910 (36 Stat. 855), as amended."

(2) Action by the Superintendent. The procedure and responsibility of the Superintendent in handling applications for Certificates of Competency are the same as those pertaining to the issuance of patents in fee. The Superintendent shall consider the competency of the individual and the location of the land in the same manner as when passing upon an application for a patent in fee. If the application is denied, the procedure set forth in Section 2.1.3B(2) of this chapter shall be followed.

(3) Action by the Area Director. The Area Director shall consider the application and report of the Superintendent. Upon approval thereof, he shall execute a Certificate of Competency. The original shall be delivered to the applicant by the Superintendent, who shall obtain a receipt therefor. One copy of the Certificate of Competency shall be forwarded to the Central Office. Should the application be denied, the procedure set forth in Section 2.1.3B(3) of this chapter will be followed.

(4) Action by the Central Office. Upon receipt of the copy of the approved Certificate of Competency, the document shall be appropriately recorded in the tract book.

(5) Action on appeals. Appeals shall be processed as set forth in 25 CFR Part 2.

.5 Removal of Restrictions on Purchased Lands Held Under Restricted Deeds.

A. Authority.

(1) Statutory. The Act of May 14, 1948 (62 Stat. 236), for lands held under the Act of June 18, 1934 (48 Stat. 984), or the Act of June 26, 1936 (49 Stat. 1967). There is no specific legislative authority governing removal of restrictions on purchased lands. The authority to remove restrictions on such lands is contained in the restrictive clause in the deeds. The restrictive clause in deeds or documents of conveyance usually provides that the land shall not be alienated, sold, or encumbered without the consent of the Secretary of the Interior. There are exceptions where the clause provides "without the consent of the Commissioner of Indian Affairs," and a few instances where it provides "without the consent of the President of the United States." In these instances, the Secretary of the Interior or his duly authorized representative is vested with authority to remove the restrictions.

(2) Regulations. 25 CFR 152

B. Procedures.

(1) Application. Applications for removal of restrictions from purchased lands shall be filed with the Superintendent. Form 5-5405, Application for Patent in Fee, should be used for this purpose with appropriate changes therein.

(2) Action by the Superintendent. The procedure and responsibility of the Superintendent in considering applications for removal of restrictions are the same as those pertaining to the issuance of patents in fee. The title status report should include recording data in the Bureau of Indian Affairs, and date of approval of a certificate, if any, exempting property from taxation pursuant to the provisions of Section 2 of the Act of June 20, 1936 (49 Stat. 1542), as amended by the Act of May 19, 1937 (50 Stat. 188). If the property is subject to taxation, a statement of unpaid taxes, if any, shall be obtained from the proper taxing officials and submitted with the record. The Superintendent shall consider the competency of the individual and the location of the land in the same manner as when passing upon an application for a patent in fee. If the application is denied, the procedure set forth in Section 2.1.3B(3) of this chapter shall be followed.

(3) Action by the Area Director. The Area Director shall examine and consider the application and report of the Superintendent. If the application is approved, he shall execute an Order Removing Restrictions. (A suggested form of Order Removing Restrictions is set forth in the Appendix, Exhibit No. 2.) The original order shall be delivered to the applicant by the Superintendent, and a receipt obtained therefor. One copy of the Order Removing Restrictions shall be forwarded to the Central Office. If the application is denied, the procedure set forth in Section 2.1.3B(3) of this chapter shall be followed.

(4) Action by the Central Office. Upon receipt of the copy of the approved Order Removing Restrictions, the document will be recorded in the appropriate land records.

(5) Action on appeals. Appeals shall be processed as set forth in 25 CFR Part 2.

2.2 Sale of Allotted and Purchased Lands, Exclusive of Inherited Lands of Five Civilized Tribes.

.1 Policy. The Bureau's responsibility for the sale or disposition of trust or restricted lands stems from the United States Government's responsibilities as trustee for the lands. Consequently, the sale or disposition of the lands shall be accomplished in such a manner as to properly discharge the responsibilities and obligations of a trustee to the owner of the land; namely, to assure:

A. That the rights of the individual owners of the land are protected.

B. That it is in the long-range best interest of the owners to sell their land.

C. That, except in the case of gift transactions authorized by the regulations, the present fair market value is obtained for the owners. After exposure to the open competitive market, through advertisement for sealed bids, if the highest bid received is less than the appraised value, such bid may be accepted with the consent of the owner when the bid received approximates the appraised value and is, in the judgment of the Area Director, the highest price that may be realized in the circumstances (see 25 CFR 152.13).

In negotiated sales other than gift transactions authorized by the regulations, the negotiated sale price must be not less than the appraisal. See 54 IAM 2.2.3G.

D. That every Indian landowner who applies for a sale is fully advised that mineral interests may be reserved in connection with a proposed sale. In each case in which the Indian applicant for a land sale is deemed to be in need of assistance in managing his or her affairs, it is mandatory, except as otherwise authorized, that all mineral interests be reserved where the land is prospectively valuable for mineral or minerals, including, of course, all instances where there is known value or development of minerals.

The reservation of minerals in connection with the sale of lands in multiple ownership must be handled on the basis of uniformity of quantity of interest as between tenants in common. To do otherwise would complicate ownership records beyond the point of practicability. Thus, all owners will be required to agree on the quantity of interest, if any, to be reserved. Where one or more of the owners is deemed to be in need of assistance in managing his or her own affairs, the action required to be taken on behalf of such individuals will be governing upon all of the other owners as well.

The assistance of the Solicitor's field staff should be utilized in preparation of mineral reservation clauses to assure that such clauses are adequate and appropriate to reserve the minerals desired, and such incidents as are necessary to derive full benefits from the minerals reserved.

The execution of this policy requires that each field office processing applications for the sale of land must obtain reliable data regarding the classification of lands under its jurisdiction with respect to minerals. Information on the subject may be obtained from the Branch of Mineral Classification, Geological Survey, Washington, D. C.

Requests for assistance from the Branch of Mineral Classification should be confined to those instances in which reliable information is not presently available on the general classification of lands. Their response to inquiries will, of necessity, deal with areas and not with specific tracts. The Branch of Mineral Classification prefers that where lands within reservations are involved, two copies of maps be supplied covering the entire reservation; one copy of the map will be returned with their report for the entire area. However, isolated tracts outside of reservations will have to be handled on an individual basis and such requests should include a description of the land according to public land surveys. In the absence of such surveys, a map or plat will suffice. The reports will be confined to a classification as to prospective value.

E. That the interests of the tribe are protected to the fullest possible extent in any case in which the tribe has a legitimate and valid interest in acquiring the individual Indian property that may be offered for sale. The precautions which are required to protect this tribal interest are stated in Commissioner's policy statement issued May 12, 1958, as follows:

"Because of the evidence of widespread public concern and substantial public misunderstanding about the Indian Bureau's policy governing sales of Indian land, it seems essential at this time to state the policy that is being followed (and the reasons for it) as clearly and concisely as possible.

"It should be emphasized at the outset that what follows deals only with lands which are the property in trust of individual Indians. Tribally owned lands, which comprise roughly three-fourths of the Indian holdings currently in Federal trust status, lie wholly outside the scope of this discussion since they cannot be sold or alienated except as authorized by Congressional legislation. While there has been some slight diminishment of tribal holdings in the past few years in connection with Federal flood control projects (principally in the upper Missouri Basin), this has been much more than offset by the addition or return of more than 1,000,000 acres to tribal holdings during the same period since 1953. These additions have resulted either from tribal purchases approved by the Department or from legislation sponsored or endorsed by the Department.

"To put the current policy governing sales of individually owned Indian lands in proper perspective, it is necessary to review briefly the immediate historical background. During the 1930's and the early 1940's the Department followed substantially the same policy on land sales that is now being so strenuously urged by the outstanding critics of the present policy. In other words, it strongly discouraged individual Indian landowners from selling their holdings and permitted such sales ordinarily only to other Indian individuals or to tribal groups. During this period hundreds of Indian landowners who wished to convert their landholdings in excess of their needs into cash for various purposes were completely frustrated and tied to lands that may have produced little or no benefit to them. Where sales were permitted with the market limited to Indian purchasers, thousands of acres were sold at prices substantially below the returns that the Indian sellers might have realized if free and unrestricted bidding had been permitted.

"During the late 1940's the former policy of restricting the market to Indian purchasers began to break down as Indian landowners demanded to be allowed to sell their holdings for a maximum price. They developed the practice of going directly to Congress for individual legislation that gave them 'fee patents' or unrestricted title to their lands. Although the Department in this period generally recommended against the enactment of such bills, a great many of those introduced in each Congressional session were nonetheless enacted. A substantial acreage of individually owned Indian land was removed from Federal trusteeship through this process and undoubtedly the major portion of it was sold to non-Indian purchasers.

"The policy which the Department and Bureau have been following over the past few years, and especially since 1955, is based on a full recognition of the individual Indian property rights which are unquestionably involved. In allotting lands to individual Indians on many of the reservations and the public domain under Congressional law during the latter part of the 19th century and down through the 1920's, the Federal Government, in effect, gave these Indians a deed to the lands allotted. It thus vested in these individual Indians (and their rightful heirs) a valid property right, though under trust, fully equivalent, in the last analysis, to that enjoyed by any other American property owner.

"Under the system of free democracy few concepts are more centrally important than respect for individual property rights. This is in sharp contrast with the situation in the Soviet Union and other communist countries where individual property rights are either not recognized at all or regularly and systematically subordinated to the interests of the State or the larger group.

"At the same time, however, we are also fully aware of our trust responsibilities for tribal property and we recognize that many of the tribal organizations have a legitimate and valid interest in acquiring individual Indian properties that may be offered for sale. The problem, in essence, has been to work out a method for permitting the fullest possible development of sound tribal land acquisition plans without violating the property rights and interests of the individual tribal members.

"During the past four years the Department and Bureau have been giving a great deal of intensive study to this problem and we have recently developed a policy which, we believe, goes a long way toward attainment of the desired objective. The essential elements of this policy are as follows:

1. Wherever a single Indian owner of an allotment asks that his land be sold and, after careful examination of the circumstances in his case, a sale appears to be clearly justified in the light of his long-range best interests, a sale will be authorized.

2. In all such cases the tribal organization will be notified that the particular allotment is being offered for sale. This will give the tribe an opportunity to negotiate a purchase with the owner. If the owner insists on competitive bidding, he will be specifically asked whether he is willing to let the tribal organization meet the high bid that may be offered. The land will then be advertised for sale and sealed bids will be received. If all bids fall substantially below the Bureau's appraisal of the property's value, all will be rejected. If one or more of the bids are acceptable, the tribe will be given the opportunity to buy the land by meeting the high bid provided that the owner has agreed in advance to such an arrangement. If the owner has not agreed and one or more sealed bids are acceptable,

See release 54-5 —
dated 4/17/61

the land will be put up for auction with the amount of the highest sealed bid as the floor of the auction bidding. This will give the tribe an additional opportunity to acquire the property in competition with other bidders.

3. In connection with Indian allotments which are in multiple ownership as a result of inheritance, the same general procedure will be followed with a few noteworthy exceptions. Such properties will be sold only if a sale is requested by one of the owners and approved by or on behalf of all the others. If any one of the owners is interested in buying out the others, he will be given first opportunity to purchase the land at the Bureau's appraisal figure unless one or more of the other owners object. A sale may also be made to one of the owners at less than the appraisal if the other owners are agreeable. If more than one of the owners wishes to buy the allotment, all of those interested will submit sealed bids and the property will be sold to the highest bidder. If none of the owners is interested, the property will be offered to the tribal organization at the appraisal price unless one of the owners object. If there is objection by an owner, then the procedure outlined under Number 2 above, involving sealed bids to be followed by an auction, will be used.

"The Department and its Bureau of Indian Affairs recognize that there are difficulties in the present situation which will hinder the tribes from full realization of their land acquisition and development plans even under the policy outlined above. One of these is the difficulty of securing the approval of frequently dozens of owners for sale of multiple-ownership lands as required under existing law. Another is the fact that many, perhaps most, of the tribes do not now have the financial resources needed for a substantial land purchase program. The Department and Bureau are now working to develop legislative proposals which we believe will go a long way toward eliminating these deterrents."

If a tribe, after full consideration of the foregoing policy statement, formally adopts a resolution expressing no interest in the purchase of lands which may be offered for sale at the request of its members, such sales may proceed without regard to the special procedures relating to tribal land acquisition. If a tribe has developed a land acquisition program which defines the precise geographical areas to which its interest is confined, sales of individual lands located outside of such areas may proceed without first referring the cases to the tribe. Where the tribal acquisition program is applicable broadly throughout the reservation and in cases where the lands are located within the boundaries of a specific program area, reference to the tribe as a preliminary step is mandatory. The requirement of referring cases to the tribe does not apply where public domain allotments, or other Indian lands, outside reservation boundaries are concerned. See 25 CFR 152.27 regarding notification to tribes.

F. That recognition is given to the fact that in certain instances the Bureau of Indian Affairs has a dual responsibility; that is, its trust obligations extend both to the Indian landowner who is offering land for sale and to the individual Indians or the tribe who may desire to purchase the offered lands. The Commissioner's policy statement of May 12, 1958, previously quoted, contains not only the broad general principals of Bureau policy on this subject but the procedural details for its enforcement.

The Commissioner's memorandum of April 21, 1959, approved by the Assistant Secretary April 22, 1959, states the general principals and policy which must be observed in determining under what circumstances, individual Indians or Indian tribes may be permitted to acquire land in a trust status. The text of that statement of policy is as follows:

"From time to time questions arise concerning our policies on when Indians may acquire additional land in a trust status and when they will be required to acquire their additional lands in a fee status. I am writing this memorandum in an effort to clarify our policies in this field.

"It should be understood that in setting down any general policy guidelines there will have to be some exceptions because of the great variety of situations. Moreover, these policy guidelines are for situations where we have administrative discretion and are subject to limitations found in various statutes or appropriation acts.

GENERAL OBJECTIVE

"It seems to me, our guiding principle can be stated quite simply.

"We will take lands in trust to provide protection and service to those Indians who are in need of it. It should be made clear to the Indian people that our policies are intended to help the tribes and the individuals acquire and keep additional lands when they need such help.

"Conversely, we will not take additional land in trust for Indians who now have the ability to manage their own affairs. I see no reason why an Indian quite able to successfully manage his own affairs should be permitted to acquire additional land in trust and receive a variety of free real estate services and tax exemption for his newly acquired land. It would be far better for the Bureau of Indian Affairs to be able to concentrate its efforts on assisting those genuinely in need of assistance and be relieved of providing protection and help to those Indians wanting more land who are highly successful through their own efforts in a business or a profession or as a farmer or cattleman with large holdings.

See Memo of 8/3/60 changing this.

TRIBAL LANDS

"When a tribe is being given or otherwise acquiring Federally owned land by special legislation, a decision as to whether or not the tribe should receive the lands in trust is a matter for Congress to determine and we will ordinarily make no recommendations.

TERMINATION OF RESTRICTIONS ON AND CONVEYANCES OF INDIAN LAND INCLUDING EXCHANGES AND PARTITIONS

"When the land is being acquired by the tribe without special legislation, if it is within the reservation boundary, the land will be taken in a trust status if the tribe so desires, regardless of whether it was held in trust or in fee by the grantor unless there is statutory prohibition.

"If the land acquired by the tribe is outside of the reservation boundary, title to it will be taken in fee unless there are very unusual circumstances, perhaps involving a land exchange. (25 CFR 151).

INDIVIDUALLY OWNED LANDS

"If the Indian is unable to manage his own affairs without assistance, newly acquired land within a reservation will be taken in a trust status for him. This land may have previously been in either trust or fee status. Usually, of course, land to be acquired will be already in a trust status. There should be no hardship to local governments from some tracts going from a fee to a trust status, as in all probability, there will be a net increase from year to year in Indian land going out of trust and being placed on the tax roll.

"If an Indian is clearly able to handle his own affairs without assistance and desires to acquire additional land, he should be required to take the land in a fee status unless there are unusual circumstances such as reinvestment of funds resulting from the Government taking his former trust lands."

It must always be remembered that the United States may not legally be burdened with the obligations of trusteeship in the absence of authority from the Congress and further, that the authorities which have been delegated by the Secretary to take action affecting the title to Indian trust or restricted lands are based on statutory authorities enacted by the Congress. All of the statutes authorizing the sale of Indian lands provide for the issuance of patents in fee simple to the purchasers or provide that approval of the deeds executed by the Indian landowners shall operate to transfer title to the purchasers in fee simple, as though a patent in fee were issued. We must, therefore, look to other than our authorities for the sale of Indian land to find authority to permit acquisition by other Indians or Indian tribes in a trust status.

Perhaps the statute of broadest application in this respect is the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as supplemented by the Oklahoma Indian Welfare Act of 1936. The annual appropriation acts have for many years contained general authority for the use of Indian tribal funds for the purchase of land and have directed that the authorized purchases be in a trust status. The Act of March 2, 1931, amended June 30, 1932 (47 Stat. 474; 25 U.S.C. 409a), authorizes the Secretary to allow the reinvestment of the proceeds of the sale of trust or restricted lands in other lands selected by the Indian and provides that title to the land so selected and purchased shall be restricted in the same quantity and upon the same terms and conditions as the lands from which the reinvested funds were derived. There are a number of statutes of special application on particular Indian Reservations or to particular Indian tribes and members thereof, which authorize land purchases in a trust status. For example, statutes authorizing the investment of judgment moneys have contained this kind of authority. Statutes, such as the Act of September 2, 1958 (72 Stat. 1766), relating to the Fort Randall Dam and Reservoir Project and the Indians of the Crow Creek Sioux Reservation in South Dakota, contain special authority for the acquisition of land in a trust status to replace land acquired by the United States for the project.

Some of the statutory authorities for the acquisition of land for Indians make mandatory the taking of title in trust. Some of the authorities provide that they may be exercised by the Secretary of the Interior in his discretion. Under the 1931 and 1932 acts, for example, the Secretary may in his discretion require an individual Indian who is unable to manage his own affairs to take trust title to lands purchased with the proceeds of the sale of other trust lands even though the Indian might wish to acquire the land in fee simple.

It is within this total area of discretion which has been vested in the Secretary by the Congress that the foregoing statement of policy must operate. Policy may not be invoked contrary to the provisions of a mandatory statute nor to accomplish an objective which is not within the scope of statutory authority. It may prove helpful in clarifying the nature of the discretion which has been vested in the Secretary, to repeat that in every case where land is being purchased by an individual Indian or an Indian tribe, the United States may not be burdened with trust responsibility except as Congress has authorized, and that most such authorities vest discretion in the Secretary as to whether the use of the authority is to be permitted. This applies both to purchases with trust moneys and with non-trust moneys. Where trust funds are to be used for the purchase, the Secretary's discretion may also extend to determining whether the purchase of land is a wise and proper use of the money. Under a few special statutes (The Fort Randall and Crow Creek Act, supra), Congress has made the decision that land may be purchased with the money and that title shall be taken in trust.

By way of implementing the foregoing, the following criteria are established as guides to assist the field in determining when land may be acquired in trust and when it must be acquired in fee.

(1) As outlined in the policy statement approved April 22, 1959, the competency factor is to receive primary consideration in connection with purchases by individual Indians.

(2) An Indian who owns an undivided trust interest in property may acquire the interests of the other owners, whether they be presently held in trust or in fee, and may be permitted to take title in trust provided there is statutory authority therefor, without regard to the competency factor.

.2 Authority.

A. Statutory. Sales of individually owned trust or restricted Indian lands, including allotments, Indian homesteads, and purchased properties on reservations or on the public domain, are authorized under the Acts issued. We must, therefore, look to other than our authorities for the sale of Indian land to find authority to permit acquisition by other Indians or Indian tribes in a trust status.

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.2 Authority.

A. Statutory. Sales of individually owned trust or restricted Indian lands, including allotments, Indian homesteads, and purchased properties on reservations or on the public domain, are authorized under the Acts of May 27, 1902 (32 Stat. 275; 25 U.S.C. 379); March 1, 1907 (34 Stat. 1018; 25 U.S.C. 405); May 29, 1908 (35 Stat. 444; 25 U.S.C. 404); March 3, 1909 (35 Stat. 778); June 25, 1910 (36 Stat. 855), as amended by the Act of April 30, 1934 (48 Stat. 647; 25 U.S.C. 372); February 14, 1913 (37 Stat. 678; 25 U.S.C. 373); May 25, 1918 (40 Stat. 561); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

B. Regulations. The regulations governing the sale of individually owned trust and restricted lands are contained in 25 CFR 152.

.3 Procedures. In the procedures outlined in this section, no attempt has been made to prescribe the number of copies of documents to be prepared for field purposes. It will be necessary for each Area to supplement the instructions to provide copies for Area and Agency purposes.

A. Application for sale of land.

(1) An Indian owner or owners wishing to sell land must submit to the Superintendent completed Form 5-105. Applications for the sale of land held in multiple ownership may be executed by any Indian owner holding an interest in the land, but the application must be approved by or on behalf of all of the other owners, except as provided herein. The requirement in the May 12, 1958, policy statement that the consent to sale of all owners be obtained was modified by the Commissioner's letter to the Area Director, Sacramento, dated January 6, 1959, a copy of which was sent to all Area Directors, as to lands that can be sold pursuant to the Act of June 25, 1910 (36 Stat. 855; 25 U.S.C. 372), which authorizes the sale of trust allotted heirship lands without the consent of all the owners, upon a finding that one or more of the heirs is incompetent. This provision of the 1910 Act is applicable except where the lands are held subject to the Indian Reorganization Act and the Oklahoma Welfare Act. The authority granted by the 1910 Act should be exercised with caution in order to avoid the possibility of justified charges that the Bureau is selling Indian land without the

consent of the owners. It is not possible to prescribe hard-and-fast rules which would govern every case; however, the use of the authority granted by the 1910 Act would be justified where land is held in complicated heirship status, the owners of a substantial percentage of the interest desire the sale, and no valid reason is advanced by the non-consenting owners for not selling. Also, in cases where a minority interest is held by an unprobated estate, or by a person whose whereabouts cannot be ascertained and the above conditions exist the use of the 1910 Act authority may be justified.

In obtaining the consent of the other owners to a proposed sale where consent is required, or in notifying the other owners of a proposed sale where the consent of all owners is not necessary, they shall be notified at the same time of the preference accorded by the foregoing statement of policy to the owners of property in heirship status to purchase the other interests therein.

(2) Sales of undivided interests, where other undivided interests will remain in trust or restricted status, will not be made except to other owners of the land and to the tribe as herein provided.

Indian tribes may acquire undivided interests in inherited Indian land that is offered for sale or exchange, provided that such interests are acquired by the tribes for the purpose of consolidating lands in aid of the economic development of the Indian community or any of its members and/or as part of a tribal plan for ameliorating the social and economic problems created by the process of heirship and land fractionization.

(3) All applicable questions on the application form must be fully answered.

(4) Title status reports should be obtained and determination made that it can reasonably be expected that

title can be conveyed, i.e., that, where necessary, guardians have been or will be appointed for minors and non compos mentis persons, and that there are no unprobated estates where the consent of all owners is required; that where fee patents are to be issued, there are approved Bureau of Land Management plats describing the parcel to be sold, etc.

(5) The Superintendent shall determine, after consideration of the information in the application, the program outlined in Item 15 of the application, and such investigation as he deems necessary, whether a sale would be in the long-range best interests of the owners. In making this determination, which in most cases will be of great and lasting significance to the individual Indians concerned, the Superintendent should seek the assistance and advice of his staff specialists and technicians not only in the area of resources management, but also those in the field of community services. The Superintendent shall reduce to writing his findings that a sale will be in the long-range best interests of the owners, indicating the factors considered and his reasons for his decision.

(6) When an application for sale of land is approved, an appraisal shall be requested. See 54 IAM 10.1.33.

When it becomes necessary in connection with sales, exchanges, probate inventories, etc., to obtain estimates of fair market value of mineral interests in tracts which are located within areas "prospectively valuable for minerals," those estimates of value should be obtained by utilizing the services of staff appraisers, working cooperatively with local representatives of the Conservation Division of the Geological Survey,--both the Mining Supervisor and the Oil and Gas Supervisor,--in accordance with the procedures which have been employed effectively in the past. It is believed that proper coordination of staff appraisal functions with the cooperative services of the Mining and Oil and Gas Supervisors will meet your requirements in most cases. In many instances, particularly in the case of appraisals merely to determine probate fees, staff appraisers will have sufficient information on the particular lands, and of the local mineral market conditions, to provide appraisals without the necessity of obtaining evaluations from the Mining and Oil and Gas Supervisors.

In the interest of encouraging Indians to assume responsibility for administering their own resources and inspiring confidence in the procedures that have been developed for their protection, appraised values may be made known to the Indian owners of the land. When this information is given to the owners, they should be informed in detail why it is to their advantage to hold the information in confidence and not reveal the appraised value to others.

Appraisals made in connection with applications for sale of individual Indian lands are, of course, estimates of the fair market value. Such appraisals are made to the use of the land as dictated by the needs and desires of the general public, and hence, represent an indication of what the land should reasonably be expected to bring on the market. These appraisals, then, are estimates of value to help the Bureau, as trustee for the lands, to decide on acceptable selling prices.

For quite some time it has been the Bureau's position that to disclose the appraised value to the public and particularly to prospective purchasers would, in effect, tend to fix a maximum that would be offered for the land and would thus preclude the owner from having the benefit of testing an open and competitive market. For this reason, appraised values will not be published in Invitations for Bids.

The dual responsibility of the Government to individual Indian landowners and to Indian tribes necessitates that when the tribe is interested in purchasing a tract and it is within their purchase program, the amount of the appraisal should be disclosed to the tribal officials, and they should be cautioned to respect the confidential nature of the information. The parties should then be afforded an opportunity to negotiate at not less than that figure. If the negotiations are not successful, the previously established procedures should then be followed. These contemplate that the individual landowner may grant the tribe a preference right to meet the high sealed bid, or if the landowner is unwilling to do that, the tribe may, at its own option, ask that it be given the privilege of competing for the land in oral bidding.

(7) If an application for sale is disapproved, the Superintendent shall advise the applicant or applicants by letter of the basis for the action, with advice of the right of appeal. All appeals shall be processed in accordance with 25 CFR Part 2.

B. Notice to tribe and to other Indians. When an application for sale is approved, the appropriate officials of the tribe shall be notified by memorandum of the proposed sale. The memorandum shall state that if the tribe is interested in acquiring the tract, it will be necessary for the tribe to so advise the Superintendent. A specific time limit shall be fixed by the memorandum for the tribe to consider and act. The time limit should be reasonable, considering both the interest of the Indian landowners and the interest of the tribe. Tribes whose existing form of tribal government does not have sufficient flexibility to provide for consideration of these matters with reasonable dispatch may find it necessary to set up a special committee with power to represent the tribe on land matters. Copies of the notice to the tribe shall be publicly posted on the reservation for the information of other members of the tribe who may be interested in acquiring land.

If the tribe is interested in acquiring the tract, it shall so advise the Superintendent by a statement in writing signed by the tribal officer or officers who are authorized to speak for the tribe in such matters. The tribe shall then be given the opportunity of negotiating a purchase prior to advertisement at not less than the appraised value. If the negotiations fail, the land may be included in any subsequent land sale advertisement.

Whether the tribe will be afforded an opportunity of meeting the high bid will be dependent upon whether the owner has agreed to grant a preference right. Individual members of the tribe shall also have an opportunity to acquire the tract by negotiation if an individual member is interested in the acquisition of the tract. If a preference is not granted to the tribe, it may become necessary to provide for oral bidding. See 25 CFR 152.27.

C. Advertised sales. Upon approval of application Form 5-5405 by the Superintendent, the following action will be taken prior to issuing public invitation for bids:

(1) Written statement of the Superintendent's findings that a sale will be in the long-range best interest of the owners and on the need for assistance in regard to reserving the minerals.

(2) Appraisal report.

(3) Title report with abstract of probate orders.

(4) Statement of irrigation operation and maintenance charges and construction costs where applicable. See 25 CFR 152.32.

(5) Where a preference to purchase is to be given to the tribe, or to a member of the tribe, or to any reasonably defined class of Indians (25 CFR 152.27), the written statement of the landowner or owners to that effect should be obtained and made a part of the case assembly.

(6) Prior to advertisement an effort may be made to obtain from the Indian owners statements of a minimum price they will accept for their land in an advertised sale. (See Exhibit 16 for form of authorization to be used.) Such minimum price may be the appraised value or any amount above the appraised value. Where an owner agrees to accept such a minimum price and the amount of the highest acceptable bid at an advertised sale, equals or exceeds that amount it will not be necessary to contact such owner

again for the purpose of obtaining his acceptance of the bid. After the sale such owner should, of course, be notified that an acceptable bid has been received. This procedure contemplates that the appraised values will be made known to the owners and necessitates that they be fully informed of the nature of appraisals as estimates of value to help in deciding on acceptable selling prices, as set out in 54 IAM 2.2.1A(6). It is realized that this procedure will not, in every case, avoid the necessity of obtaining acceptancesfrom the owners, but it should be of assistance in many cases.

D. Advertisements. Form 5-5417, "Invitation, Bid, and Award," will be used in all jurisdictions. The appraised value of the tract may not be shown in the advertisement. Any departure from the standard terminology in the advertisement involving restrictions, reservations, or conditions must be approved by the Area Director.

In the sale of tracts which have been determined by the tribe to be essential to the protection of its interests and in which negotiation has not been successful, the advertisement will provide for oral bidding to follow the opening of sealed bids in all cases in which a preference right to meet the high bid has not been granted to the tribe seeking such a right, provided the tribe is not the high bidder in such cases. The auction will be held provided one or more acceptable sealed bids are received. The auction will be limited to bidders who, in their sealed bids, offer 75 percent or more of the appraised value of the land. It will not be required that the sealed bid of the tribe amount to 75 percent or more of the appraised value, in order for the tribe to participate in the oral auction. See the regulations, 25 CFR 152.27. Three copies of the advertisement should be sent to the Central Office. After the bids are in, a like number of copies of the abstract of bids should be sent to the Central Office.

E. Bids. The provisions of the regulations contain relatively detailed guidelines on the subject of inviting, receiving and processing bids. Certain general observations may prove helpful. All employees, whether directly responsible for the sale of land or otherwise, should strictly observe the highest degree of caution to the end that they neither give assistance nor the appearance of assistance to prospective bidders in preparing bids. Proper discussion with prospective bidders is limited to assistance in locating the property on maps, giving directions for locating the property on the ground, and general comment on the character of the property, the nature of the improvements, if any, the general type and estimated volume of timber thereon, etc. It is regarded as desirable to refrain from even such limited discussions of the property on the day of the sale.

Responsibility for receiving and holding bids should be assigned, if possible, to a single individual who should have access to a place of safekeeping for holding the bids until the time fixed for the sale. The number of bids received and any information concerning the identity of those who have submitted bids are confidential matters and should not be disclosed to or discussed with other prospective bidders. Disclosure of such information may affect the bidding adversely to the interests of the Indian landowners.

Sealed bids may be withdrawn at any time prior to the time fixed for opening the bids.

All bids must be in the hands of the officer conducting the sale prior to the time fixed for opening the bids. This rule must be enforced without exception, whether the bids are submitted by mail or in person by the bidder or his representative. Delivery of his bid is the sole responsibility of the bidder. Generally, the tardy bidder's reasons are genuine and are not based on an effort to seek unfair advantage. Nevertheless, the only proper procedure in a sealed bid sale is to observe the foregoing rule with no exceptions in any degree.

F. Opening bids and conducting an auction. Preparation for a bid opening should include, if possible, the arranging for the use of a room of sufficient size to accommodate the anticipated number of interested bidders, landowners, and other observers. It should be remembered that a bid opening is a public function and must be conducted in such a manner as to instill confidence in the general public that the procedure is being competently handled. If limitations on physical space make it necessary to use a room normally occupied as office space, the transaction of other business should be deferred until the conclusion of the bid opening to accommodate that procedure with as little interference as possible. Suitable clear desk space should be available to the individual opening the bids to permit the handling of the papers without risk of loss or undue confusion. As each bid is opened, the identity of the bidder, the identification of the property for which the offer is made, and the amount of the bid should be read aloud. The bid should be simultaneously recorded by a clerical assistant on a suitable abstract form. It is advisable to have a representative of the finance function assisting at bid openings to handle the receipt of the deposits submitted with the bids.

At the conclusion of the opening of sealed bids, it is permissible, and within the discretion of the officer conducting the sale, to announce the identity of the apparent high bidders and the amounts of the bids in all cases where it is clearly apparent that the bid is acceptable in terms of its relation to the appraised value or the amount the owners have fixed as the minimum acceptable, if they are asking more than the amount of the appraisal. Any such announcement should be accompanied by an unequivocal statement that it is made for general information purposes only, that it is not an award, and that the authority to accept the bids is vested in the Area Director to whom the record of the bidding must be submitted for determination of the successful bidders and subsequent action.

The deposits submitted with obviously unsuccessful bids may immediately be returned to the bidders if they are present at the bid opening or are there represented by authorized representatives. It is acceptable practice in such instances to require only an informal endorsement of receipt thereof written in any suitable available space across the face of the bid and signed by the individual receiving back the exchange.

In conducting an oral auction, following a sealed bid opening, certain additional requirements should be observed. At the outset, it is advisable to include in any one sale no more cases than may reasonably be handled in a day's time. Form 5-5417, Invitation, Bid, and Award, provides that the officer in charge may continue the oral bidding to a date and time to be announced upon opening of the sealed bids. Such a continuance should be based on the number of tracts subject to oral bidding, anticipated time needed to complete such bidding and other pertinent considerations. If it is regarded as unlikely that the oral auction may be concluded by the close of business on the date of the sealed bid opening, it should be advertised to be held on the following day. The sale should be scheduled so that the day following the sealed bid opening is a business day. For the convenience of bidders and others interested in being present, the oral auction should be scheduled to begin at an hour reasonably convenient for prospective bidders.

Each oral bid should be repeated aloud by the official conducting the auction and should be immediately recorded in writing on a suitable abstract form so that at the conclusion of the bidding the abstract will show each bid made and the identity of the bidder. In addition, for the convenience of the bidders, suitable blackboard space should be available to permit visually demonstrating to the assembled bidders the last bid made. It is not regarded as essential to record on the blackboard the complete abstract of the oral bidding.

Oral auction sales will be a new development for many of our field offices. The foregoing comments may be regarded by some offices as unnecessarily detailed. Our effort is to provide as much information as possible based on the collective experience available. It is recognized that there is no substitute for experience and for the development of individual judgment based on that experience. Consequently, it is not possible in this Manual to cover every eventuality.

It should be remembered that the officer conducting the sale is in a position of authority requiring him to rule on questions of procedure which may arise during the course of the sale. He must be certain that his judgment on questions which may be raised is in accordance with law and regulation. He should not hesitate to call a recess until questions may be resolved by higher authority if necessary. It is his responsibility to maintain orderly procedure to the end that the rules of the sale are strictly observed without partiality and in a manner which will reflect creditably on the conduct of public business.

It is desirable to include in the invitation for bids, preliminary to an oral auction, an announcement that, in the discretion of the officer conducting the proceedings, the auction may be concluded at any time when, in his judgment, sufficient time has elapsed since the last bid was made. In a sale of small tracts, the time allowed for bidding may be shorter. In a sale of large or extremely valuable tracts, such as a heavily timbered acreage, it is not unreasonable to allow bidders a longer time to determine whether they wish to raise the last offer and to calculate the amount of such raise.

Tribal representatives at an oral auction will be expected to carry authority to obligate tribal funds to the full extent of their interest in the auction, and such representatives should not be permitted unreasonably to delay the progress of the auction under the guise of lack of authority.

When the expenditure of tribal funds for the purchase of lands at oral auction is subject to the approval of a duly authorized officer of this Bureau, a determination of the approximate amount which the tribe can afford to pay for the land should be made in advance of the auction. This determination will require that there be considered the special value of the tract to the tribe; i.e., its unique purpose in the tribe's economy, which may result in a determination of a maximum which bears little relation to the appraised value. It must be borne in mind that the appraisal does not fix price, but that it is an estimate of the market for the land considering its highest and best use to prospective purchasers generally. Tribal representatives dealing with tribal funds not subject to Bureau approval should, as a matter of good practice, arrive at their own estimates of the amount the tribe may be justified in paying for land in advance of the auction so that unreasonable delay and possible loss of the land may not be occasioned by the lack of such determinations.

G. Negotiated Sales. The regulations, 25 CFR 152.25, provide broad authority for the approval of negotiated sales. The delegations of authority to the Area Director cover all determinations required to be made within the scope of that section, except the approval of transactions governed by 25 CFR 140.5(c), which has not been delegated.

In considering the justification for a negotiated sale from an Indian landowner to an Indian or to an Indian tribe, recognition must be given to the fact that there is a dual responsibility to both the seller and the buyer. The extent to which those conflicting interests are equitably balanced is the measure of the proper discharge of trusteeship responsibility. The best interests of the seller and of the buyer are not necessarily measurable by the same yardstick. The appraised value of the property fixes substantially the minimum which should be accepted on behalf of the seller, but because an appraisal of the fair market value is made to the uses of the land in general and not to a specific or unique need which may exist for a single purchaser, the appraisal does not necessarily fix the maximum which may justifiably be paid for property by the individual Indian purchaser or by the tribe. Where competitive interest in the land is clearly indicated, advertising is of course desirable.

The record in connection with negotiated sales to non-Indians should contain a documentation of the facts supporting a determination that advertising is impractical. Although other factors may justify a negotiated sale, there will generally be a showing of lack of competition for the land, due to its economic or geographic isolation. The record should also contain the written statement of the Indian landowner requesting that the transaction be handled by negotiation.

H. Instruments of conveyance. See discussion regarding authorities for taking trust or restricted title in 54 IAM 2.2.1F. Where such title is being taken both the authority for taking trust or restricted title and the authority for the sale should, except as otherwise indicated, be cited in the deed.

(1) When conveyance is to be made to a tribe or an individual Indian and title is to remain in a trust or restricted status, use:

(a) Deed Form 5-5446 for lands on Indian Reorganization Act reservations and on other reservations where there is statutory authority to acquire lands and take title in the United States in trust for a tribe or an individual Indian.

(b) Deed Form 5-5449 for lands acquired with the proceeds from the sale of non-taxable trust or restricted lands, or any interest therein, pursuant to the Act of March 2, 1931 (46 Stat. 1471), as amended by the Act of June 30, 1932 (47 Stat. 474; 25 U.S.C. 409a).

(c) Deed Form 5-5447 shall be used only in cases where Deed Forms 5-183 and 5-185 are not appropriate. Although there is no specific statutory authority for the use of this form it has been judicially recognized that its effect is to pass to the grantee the same quality and quantity of an estate as is held by the grantor (United States v. Chinburg et al, 224 F. 2d 177). Generally, its use should be limited to gift transactions and cases involving exchanges of land or interests in land. It will not be necessary to cite any authority for acquisitions when this form is used.

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(d) The use of the "Order Transferring Inherited Interests" is possible as a matter of law where the Secretary of the Interior has the authority to sell and convey lands and there is authority for the acquisition by the grantee of the same quality of an estate as is held by the grantor. The Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483), which requires the application of /all/ the Indian owners for the approval of conveyances of lands thereunder, renders the use of the Order Transferring Inherited Interests of no procedural value in such cases. Its use for the conveyance of other lands is likewise of doubtful value as a matter of procedure because of the general policy requirement that all of the Indian owners consent to or approve the sale of land in which they have an interest. Should th~~ere be cases in which the use of the Order is indicated, an exception to policy will be required~~.

See New Supp.

"However, the Order may be used in those cases where a conveyance is in the best interests of the Indian owners, its use i permitted as a matter of law, and it complies with the spirit of 54 IAM 2.2.3A(1).

(2) When fee simple title is to be conveyed, Deed Form 5-5446 or a patent in fee should be used.

(3) Conveyancing following advertised sales will be handled as follows:

(a) When it has been determined that there is an acceptable bid, the Superintendent will submit the offer to the Indian owner or owners for acceptance, except as provided in 2.2.3A(1), and 2.2.3C(f).

(b) If conveyance is to be made by deed, an original and one copy of the appropriate form shall be executed by the Indian owners, and properly acknowledged. The specific statute authorizing the conveyance should be recited in the deed.

(c) If conveyance is to be by patent in fee, the Superintendent shall prepare a letter, for the Area Director's signature, to the Director, Bureau of Land Management, through the Commissioner of Indian Affairs, requesting that a patent in fee be issued to the purchaser. A suggested form for this letter is in the Appendix to this chapter marked "Exhibit No. 6." See also Illustration No. 12, Check List for Indian Patents. The original and two copies of the letter should be submitted to the Central Office; such other copies should be prepared as are required for Area and Agency purposes.

(d) Specific instructions must be given to the Bureau of Land Management regarding any reservations and conditions which are to be included in the patent, particularly as to minerals, rights of way, and irrigation liens. See also Illustration No. 15.

I. Sales assembly. After execution of the deed, consents to sale, or preparation for the request for patent, the Superintendent shall submit the following to the Area Director for consideration:

(1) Application for sale, Form 5-5404.

(2) Written statement of finding that a sale will be in the long-range best interest of the owners and need for assistance in regard to reserving minerals.

(3) Appraisal report, Form 5-5201.

(4) Title report with abstract of heirship findings.

(5) Irrigation statement and water contract (when applicable) in accordance with 25 CFR 159.1 snd 160.

(6) Resolution of the governing body approving purchase, if sale is to a tribe.

(7) Executed deed, consents to sale or request for patent.

*(8) Report on Sale of Indian Land, Form 5-5415.

*(9) Highest bid.

*(10) Signed statement of preference by grantee (when applicable.)

*Applicable only in advertised sales.

The Superintendent's files, in connection with each advertised sale, must include documentation showing that all proposed sales have been referred in writing to the tribal authorities, and the written statement of tribal interest or waiver thereof from the tribal authorities as required by the statement of policy, supra. If no response is obtained from the tribal authorities, the file should include a statement to this effect, including the date notice was given and the time allowed for expression of tribal interest.

J. Approval by Area Director.

(1) The award will be indicated in the appropriate block on Form 5-5417 and executed by the Area Director.

(2) One copy of the completed contract will be returned to the successful bidder via certified mail, return receipt requested, with instructions to remit to the Superintendent the balance of the purchase price, as specified in 25 CFR 152.28, within 30 days from receipt of notice.

(3) The Area Director will approve the deed when a deed is to be used to convey title and return same with an executed copy of the contract to the Superintendent with instructions to deliver the original deed to the purchaser upon receipt of the balance of the purchase price plus sales fees.

(4) Patents in fee will not be requested until the full amount of the purchase price plus sales fees have been received by the Superintendent.

K. Final action by Superintendent.

(1) When the balance of consideration plus fees has been paid to the Superintendent, he shall immediately

transmit a copy of the Official Receipt to the Area Director. A copy of the approved deed shall be submitted to the Central Office and distribution made of such other copies of the deed as is required.

(2) In the event of forfeiture by the purchaser, the Superintendent will immediately notify the Area Director, who will direct that the approved deed or request for patent in fee be destroyed.

Section 2.3 Partitions of Inherited Allotments (Except as to Osage and Five Civilized Tribes)

.1 Authority

A. Statutory

Act of May 18, 1916 (39 Stat. 123, 127; 25 U.S.C. 378).

B. Regulations

25 CFR 152.33

.2 General Policy

The partition of inherited lands should be effected only where such division is advantageous to the heirs and devisees. It is not feasible to partition the property when it will result in splitting the land into uneconomic or otherwise undesirable units and, as a general rule, it would be impractical to partition a tract of grazing or timber land. For the most part, partitions should be confined to the following:

A. Estates consisting of or capable of being divided into two or more tracts of land each of such value that it is feasible for one or more of the owners to obtain title to a separate tract and thereby reduce or eliminate fractional interests.

B. Tracts occupied by two or more owners when one or more of them desire to make permanent improvements.

C. Tracts which are sutiable for real estate subdivisions such as lands fronting on a body of water or located within or close to a municipality.

D. Tracts in which an undivided interest is held in an unrestricted status.

.3 Procedure

A. Action by the Agency Superintendent

When the heirs or devisees of a deceased allottee desire to make a division of the lands of the decedent whereby each will obtain a specific parcel in lieu of an undivided interest in the entire tract, they shall execute a "Petition for Partition" on Form No. 5-5414 It will be necessary for the petitioners to agree upon a division of the property in order that such division may be set forth in the petition. If any Indian owner of a restricted interest desires to obtain fee simple title to the land to be set apart to him, such heir or devisee should make application for a fee patent or an unrestricted deed on Form 5-5404. The Agency Superintendent will render assistance and advice to the owners in order that an equitable and suitable division of the property may be effected. The lands shall be appraised by a member of the agency staff and separate appraisal reports shall be furnished for each parcel. If it is impossible or impractical to arrange a partition upon substantially equal values and these variations exceed 20% of the average value of a partioned parcel, the variances in valuation shall be explained to the owners and if they desire to proceed with the partition they must make proper arrangements to pay the differences in value or submit signed statements whereby they waive the difference in value. The Superintendent shall submit in duplicate to the Area Director the following documents:

(1) Petition for partition with the Superintendent's report, which is a part of the form. Any supplemental petitions, statements or agreements in connection with the partition shall be attached to the petition.

(2) Appraisal reports.

(3) A report showing the status of the land as disclosed by the agency records and setting forth an abstract of the heirship findings.

(4) Certifications of Indebtedness covering all estate appearing in the chain of title and covering each individual heir or devisee.

(5) Statements of construction, operating, and maintenance charges if the land is within an irrigation project, the statements to be furnished by the Project Engineer or other officer in charge of the records.

(6) Letter of transmittal containing the recommendation of the Superintendent and any pertinent information not included in the foregoing documents.

In the event the land cannot be partitioned by legal subdivisions of the section or aliquot parts thereof, it will be necessary to effect the partition by execution of deeds. In the event deeds are used, they should be submitted in quadruplicate.

In effecting partition by deeds title to lands held under the Indian Reorganization Act (Act of June 18, 1934 - 48 Stat. 984), shall be conveyed to the United States of America in trust for the grantee and Form No. 5-5446, "Deed to Restricted Indian Land", shall be used for this purpose. When the lands are not under the Indian Reorganization Act, Form No. 5-5447, "Deed to Restricted Indian Land Special Form", will be executed as the title conveyed will be the same as that vested in the grantors. However, if any Indian owner applies for a fee simple title and the Superintendent does not deny such application, Deed Form No. 5-5446 should be executed in favor of the applicant.

Partitions shall be effected by execution of deeds in the event the allotment is held under a patent in fee subject to restrictions against alienation, encumbrance, and taxation. The form of deed and manner of designating grantee will be dependent upon whether or not the lands are within a reservation under the Indian Reorganization Act as set forth in the foregoing paragraph.

B. Action by the Area Director

Upon receipt of the petition and related documents from the Superintendent, the Area Director shall examine the same and should he find that an equitable and desirable partition will be effected, he shall approve the transaction. When a partition is to be effected by issuance of trust or fee patents to the respective heirs or devisees the Area Director shall address a letter to the Director, Bureau of Land Management, setting forth the legal description of

best copy available

the allotments being partitioned, the name and number of the allottee, the date of the original trust patent, the division of the land, the full names of the individuals who are to receive trust or fee patents, and the type patent each individual is to receive. This letter shall be transmitted to the Commissioner of Indian Affairs in duplicate, accompanied by a copy of the petition. A copy of the letter shall be forwarded to the Superintendent. A suggested form of letter is set forth in the Appendix as Exhibit No. 7. Specific instructions must be given to the Bureau of Land Management regarding any reservations and conditions which are to be included in the patents, particularly as to minerals, rights-of-way, and irrigation liens.

If the partition is to be effected by deeds the Area Director will approve the deeds. One copy of each deed shall be forwarded to the Central Office for recording, one copy shall be filed in the area office, and the original and one copy thereof shall be forwarded to the Superintendent. The Superintendent shall deliver the original deed to the grantee after making proper notation of the approval on the tract books.

C. Action by the Central Office (This Section is obsolete - refer to stat offices of BLM and BIA title plants for current procedures)

Upon receipt of the Area Director's letter to the Director, Bureau of Land Management, the Central Office will make appropriate notation on the tract books of the approval of the partition and transmit the original letter to the Bureau of Land Management, The patents, when issued, will be transmitted by the Bureau of Land Management to the Commissioner of Indian Affairs and will be recorded in the tract book by number and date. Thereafter, the patents will be transmitted to the Superintendent and copies of the letters of transmittal furnished the Area Director. These letters shall contain the patent number, date, and name of patentees.

When the partition is effected by deeds, the only action which will be taken by the Central Office is the recording of deeds.

Section 2.4 Removal of Restrictions and Sales of Five Civilized Tribes Alloted Lands and Purchased Lands held under Carney-Lacher Form Deeds.

.1 Policy. Orders removing restrictions from allotted or purchased lands held under a Carney-Lacher form of deed may be issued upon the written request of adult Indian owners, or upon the written request of the legal guardian of a minor owner or of an owner who is non compos mentis, and a showing (1) that an adult applicant, who applies for an Unconditional Removal of Restrictions, is competent and capable of managing his own affairs; (2) that approval of an application for Conditional Removal of Restrictions would be beneficial to the applicant and would have no adverse effect upon the applicant's family; (3) that approval of the application, in the case of a minor or a person non compos mentis, is necessary for the support and welfare of the ward, or that it would be advantageous to invest the proceeds of a sale in other lands or assets, provided that such applications have first received the approval of the County Court having jurisdiction over the estate of the minor or incompetent; (4) that approval of an application would permit an applicant to adjust his resources in order to become or to continue eligible for a Public Assistance grant, in conformity with standards of eligibility set by the Oklahoma Department of Public Welfare.

.2 Authority.

A. Removal of Restrictions.

(1) Statutory: Act of Congress approved May 27, 1908 (35 Stat. 312 and the Act of May 10, 1928 (45 Stat. 495).

(2) Regulations: 25 CFR 241.13-241.15 and 241.45.

(3) References: An Order removing restrictions, effective thirty days after dating, Rogers vs. Noel 34 Okla. 238, 124 Pac. 967. Deere vs. Neumeyer 154 Pac. 350.

B. Sales.

(1) Statutory: Act of May 27, 1908 (Stat. 35, 312) and the Act of May 10, 1928 (45 Stat. 495).

(2) Regulations: 25 CFR 241.37-241.39, 241.41 and 241.43.

.3 Determination of Competency and Factors to be Considered Before Approving Applications. See Section 201.02 of this Chapter.

.4 Procedures.

A. Applications for Unconditional and Conditional Removal of Restrictions.

(1) Applications shall be made on Form 5-484, in duplicate, and submitted to the District Agent having jurisdiction over the land.

(2) Applications for unconditional removal of restrictions need be signed only once and should be witnessed by one person. On applications for conditional removal of restrictions the applicants shall also sign the agreement for supervision of the proceeds. Applicants unable to write shall execute by right thumb print witnessed by two persons.

(3) Applications must be executed before a District Agent or acknowledged before a Notary Public or an official authorized by law to administer oaths.

(4) It is preferred that applications be in the handwriting of the applicant; however, it may be typewritten or in the handwriting of another.

(5) Applications shall be accompanied by a completed Field Report form in duplicate. Applicants for unconditional orders must prepare the forms.

(6) Applicants should submit a statement setting forth the reasons or justification in support of their request for an unconditional removal.

(7) Applicants for an unconditional removal shall furnish the names of three reputable disinterested persons who can give an unbiased opinion on the competency and ability of the applicant to manage his affairs.

(8) It is desirable that applicants for a conditional removal submit a statement outlining his plans for disposal of the land sale proceeds.

3. Action by the District Agent. The District Agent or Social Worker shall make such investigation and inquiry as may be necessary to determine the correctness of information furnished by the applicant. If possible, a conference should be had with each applicant for that purpose. The application, together with the following papers shall be submitted to the Area Director:

(1) Field Report.

(2) Copies of correspondence he has had with the applicant, pertaining to the application.

(3) Surface appraisal of the land involved in applications for conditional removal of restrictions.

(4) Letter of transmittal in which is listed any pertinent information not set forth in the application or accompanying forms. The letter shall contain the District Agent's recommendation with justification, and outline of plans for disposal of the proceeds if funds are to be supervised.

(5) A take-off of the county records on taxable land, or on any land in which there is a question as to title status.

C. Action on Applications of Welfare Clients.

(1) A conference shall be held between the District Agent and the County Welfare Director prior to the submission of any application for removal of restrictions.

(2) The conference shall cover the following points:

(a) The extent of the applicants'' resources.

(b) Does the applicant's land constitute a surplus resource according to the interpretation of the regulations of the Department of Public Welfare.

(c) The general economic conditions of the household; and living arrangements.

(d) The relationship of the applicant to the other members of the household and their economic status.

(e) Whether the applicant for or a recipient of a Public Assistance Grant fully understands the factors involved as to the requirements of the Department of Public Welfare on resources which affect eligibility for a Public Assistance Grant.

(f) Whether the applicant wishes to retain his land resource or wishes to dispose of the land resource in order to maintain continued eligibility for Public Assistance.

(g) A sound plan for use of the proceeds of sale of land resources.

(h) That sale of the lands involved will not cause hardship for other families living on the land or create additional welfare cases.

(3) The objective of the conference should be to explore means to improve the living conditions of the applicant. To this end, primary consideration generally should be given to providing an adequate home for the applicant, either through purchase or repairs to the present home.

(4) The Indian Bureau Social Worker shall be called upon for a case history and recommendation in doubtful cases and in all cases involving recipients of or applicants for Aid to Dependent Children. Applications for removal of restrictions by recipients of or applicants for Aid to Dependent Children Grants shall not be considered unless disposal of land resources is essential to securing a home or providing better educational facilities for the children.

(5) It shall be made clear that the option rests with the client whether to dispose of a land resource and that the final determination rests with the Bureau whether the land is an available resource.

(6) All applications should be accompanied by a report of the case history to be furnished by the County Directors of Public Welfare if available.

D. Action by the Area Director.

(1) Unconditional removals of Restrictions.

(a) Applications shall be checked in the Area Office to ascertain that land descriptions and other data are correct.

(b) A complete record of the case shall be made, including all correspondence with the applicant.

(c) A certificate shall be secured showing that the applicant is not indebted to the Government, and an appraisal shall be secured of the oil, gas and other mineral values of the subject land.

(d) The persons listed by the applicant as references shall be called upon to furnish their opinion of the ability and competency of the applicant to manage his affairs.

(e) The Area Director shall examine and review the applications for removal together with the report and recommendation of the District Agent, and related data.

(f) If the application is disapproved the Area Director shall so inform the applicant in writing, with the reasons for disapproval, and shall inform the applicant of his right to appeal from the decision to the Commissioner of Indian Affairs.

(g) When favorable consideration is to be given to the application there shall be prepared orders for the removal of restrictions in quintuplicate on form 5-662. Provisions shall be inserted in the order when the application covers the surface and a part of the mineral interests, or when it covers reserved mineral interests only.

(h) The Area Director shall approve the order, if justifiable.

(2) Conditional Removals of Restrictions. The procedures in processing applications for conditional removals of restrictions are the same as the procedures in connection with applications for unconditional removals of restrictions, as outlined in Section 204.04D (1) above. In addition, there shall be obtained or prepared the following:

(a) An appraisal of the surface value of the land.

(b) A photostatic copy of the deed shall be furnished in cases of applications for removal of restrictions on purchased land.

(c) An Order for Removal of Restrictions on Form 5-540, in quintuplicate; special provisions shall be incorporated in the order for cases in which there are unusual conditions, or in which there is to be a sale of less than a fee simple estate.

(d) When both the surface and minerals are owned by the applicant an order removing restrictions from minerals only shall not include more than one-half of non-participating royalty interest.

(e) An Order Concerning Terms of Sale and Disposal of Proceeds on Form 5-1041, in quintuplicate.

(f) The Area Director shall prepare notice of sale of land and transmit a number of copies to the District Agent who is to conduct the sale.

.5 Procedures for Sales after Issuance of Conditional Orders Removing Restrictions.

A. Action by the District Agent.

(1) The District Agent shall give as wide publicity as possible to each sale by posting for at least 30 days in his office and in three public places including the County Court House where the land is located, a copy of the notice of sale, and by mailing copies to the land owner and to all known prospective bidders. The land owner shall be given opportunity to advertise his or her land sale in newspapers of the area in which the land is located. (See 25 CFR 241.37)

(2) The District Agent shall conduct the sales of lands in conformity with the notices of sales, and shall furnish a complete report on the result of each sale.

(3) The District Agent shall notify the successful bidder and advise him to comply with the terms of sale within 10 days.

(4) The District Agent shall transmit to the Area Director by Field Receipt any money deposited with him by a bidder, together with a bidder's certificate form 2-532, in duplicate.

(5) A high bid of less than the minimum appraised value shall not be accepted.

B. Action by the Area Director.

(1) The Area Director shall examine and review the report of land sale as submitted by the District Agent and, if the bid is acceptable, advise the land owner of the result and transmit a deed for execution by the land owner.

(2) The Area Director shall call on the bidder to deposit the balance of the consideration if any remained unpaid.

(3) The Area Director shall complete the certificate on the Order of Removal of Restrictions and the certificate on the deed executed by the land owner. When the full purchase price and sales fees have been deposited, the Order of Removal and deed shall then be delivered to the purchaser.

(4) The Area Director shall make a complete record of all sales, including correspondence with the land owner, District Agent, and others involved.

(5) When the owner desires that a sale for less than the appraised price be approved and the Area Director believes such a sale justified the matter shall be submitted to the Commissioner with this recommendation.

(6) The Area Director shall immediately refund to the high bidder all money deposited on a land sale that is not approved.

(7) The Area Director may authorize the District Agent to re-advertise land for sale when it appears advantageous to do so and it is evident a sale can be made in the best interest of the land owner and his family.

(8) The Area Director shall withhold or withdraw from sale any land when he has reason to believe sale would not be for the best interests of the applicant.

(9) The Area Director shall inform the County Director of the Department of Public Welfare, of the result of a land sale when sale of the land affects eligibility for a Public Assistance grant.

LIST OF EXHIBITS

Exhibit No.

1 Form Letter to BLM Requesting Issuance of Fee Patent to Allottee. II-56

2 Order Removing Restrictions II-57

3 Instructions For Drafting and Execution of Deeds

  Designation of the Grantor II-58
  Designation of the Grantee II-60
  The Consideration Clause II-61
  Authority Clause II-65

4 Consent to Sale II-69

5 Order Transferring Inherited Interests. II-70

6 Form Letter to BLM Requesting Issuance of Fee Patent to Purchaser(s). II-72

7 Form Letter to BLM Requesting Issuance of Trust Patents in Partitionment(s) II-73

8 Application for Fee Patent or For Sale of Indian Land. II-74

9 Report on Sale of Indian Land II-77

10 Invitation, Bid and Award II-78
  (and Attachment) Schedule of Lands to be Sold . . II-80

11 Checklist for Indian Patents. II-81

12 Notation of Rights-of-Way Required in Patents . . . II-82

13 Notation of Rights-of-Way Not Required in Patents . II-83

14 Authorization to Accept Bid on Indian Land Offered at Advertised Sale. II-84

LIST OF EXHIBITS (Cont'd)

Exhibit No.

15 Deed to Restricted Indian Land. II-85

16 Lease Forms Used by BIA-RPM II-89

17 Synopsis of Relevant General Statutes II-91

Director, Bureau of Land Management

Washington 25, D. C.

Through: Commissioner
Bureau of Indian Affairs

Dear Sir:

The application of ______________________, *____________,
for a patent in fee for land embraced in ____________________________
(Tribe or Public Domain)
Allotment No. ____
(If Public Domain include Land Office and Serial No.)
of ________________________, pursuant to authority delegated by
(Name of allottee)
Secretarial Order No. ______ of ____________, 19___ (____F.R.____) and
Order No. _____ of the Commissioner, Bureau of Indian Affairs, dated ________
____________, 19___ (____F.R.____), has been approved.

It is requested that a patent in fee be issued to the above-named applicant for the following described land, provided there are no reasons appearing on the records of the Bureau of Land Management why such patent should not be issued: **____
____.

Sincerely yours,

Area Director

* Insert the word heir,
devisee, or purchaser,
should one be applicable.

** Add any conditions or reservations
necessary, if they have not been
included with the description.

EXHIBIT NO. 2

ORDER REMOVING RESTRICTIONS

WHEREAS, by a deed dated ______________, 19 __, and recorded in Indian Office Deed Book Vol. ___, Page ___, ____, an Indian of the ______________________ Reservation, acquired from ______________________, land described as the ______________ ____ containing _______ acres, subject to the condition that when the title is in the grantee or heirs, no sale or encumbrance thereof shall be valid without the consent of the Secretary of the Interior, and

WHEREAS, the owner has applied to have the restrictions against the sale or encumbrance of the above-described land removed and upon examination, consideration, and investigation, it is found that the best interests of the applicant will be served by removing the restrictions from the above-described property,

NOW, THEREFORE, by virtue of the provisions of the deed c conveyance and authority conferred on the Area Director by Secretarial Order No. _____ of ______________, 19__ (____F.R. _________), and Order No. _____ of the Commissioner of Indian Affairs, dated _______, 19 ___ (___F.R. ________), the restrictions or encumbrance on the above-described land are removed.

Area Director

INSTRUCTIONS
for
DRAFTING AND EXECUTION OF DEEDS

DATE

The date to be inserted in the first line should be the date on which the grantor or grantors sign the deed. When they sign on different dates, use the date the first grantor signed.

DESIGNATION OF THE GRANTOR

The space following the date is for the purpose of naming or designating the grantors. This should be written in such a way as to indicate the sex and marital status of the grantor or grantors and should indicate whether the person is to sign as an owner or to extinguish the rights of dower, curtesy, or homestead. Allotment number should, when grantor has one, be shown following the name, as: Marion Smith, Flathead allottee No. 222, a single man. In the examples that follow, the phrase showing the allotment number has been omitted for the sake of brevity.

Marital Status	Manner of Designation
(a) Has never been married	Marion Smith, a single man Marion Smith, a single woman
(b) Is divorced	Marion Smith, a divorced man Marion Smith, a divorced woman
(c) Separated by death	Marion Smith, widower Marion Smith, widow
(d) Owner is married	The owner is designated first, followed by the designation of the spouse, as John Adams and Mary Adams, his wife, or Mary Adams and John Adams, her husband

(NOTE: In no case should a wife be designated as Mrs. John Adams.)

(e) Husband and wife as co-owners	John Adams and Mary Adams, for themselves and as husband and wife.
(f) Co-owners as grnators	Marion Smith, a single woman; Francis Martin, a single man; Paul Jones, a widower; John Anderson and Mary Wright Anderson, his wife; and John Jones and Anna Jones, for themselves and as husband and wife.

INSTRUCTIONS
for
DRAFTING AND EXECUTION OF DEEDS

DESIGNATION OF GRANTOR (continued)

(g) When owner is a minor	Joseph Sampson, legal guardian for Walter Johnson, a minor. (There should be attached to the deed a certified copy of the court order confirmin the sale of the land)
(h) When owner is mentally incompetent	John Doe, legal guardian for Adolph Doe, incompetent. (Attach to the deed a certified copy of court order)
(i) When ownership is Indian-inherited	Following the designation of the grantor(s) show the name of the original allottee, as: heirs of Growler, Fort Peck allottee No. 1381, Probate file Nos. 121280-15, 53575-35, 50477-20, deceased, a Fort Peck Indian.
(j) When Indian names are used. (See Indian Office Cir. 2318)	(1) English name of husband and Indian name of wife: John Smith and Brightstar Smith, his wife. (2) When both use their Indian names: Big Bear and Brightstar, his wife.
(k) When an agent is acting for the grantor	John Smith, attorney in fact for John Doe. (Attach to the deed a certified copy of the power of attorney)
(l) When grantor is a corporation	When grantor is a private corporation: John Smith, President, Rocky Mountain Livestock Company

(NOTE: Certified copy of the resolution of the Board of Directors authorizing John Smith to convey; also, articles of incorporation and, if a foreign corporation, certificate from the proper state officials that the corporation is qualified and in good standing to do business in the state.)

INSTRUCTIONS
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DESIGNATION OF GRANTEE

Careful and complete designation of grantee is important. This shows who gets title and how title is taken.

(a) Conveyance in severalty:

1. When conveyance is to result in title in trust for the tribe: The United States of America in trust for the Blackfeet Tribe of the Blackfeet Indian Reservation, Montana. (Use the corporate name of tribes organized under IRA unless special advice is received for other designation. For tribes not so organized, use the designation specified in the Act of Congress authorizing the purchase, or as specifically advised by the Area Director.)

2. When conveyance is to result in restricted title for an individual Indian: When IRA: The United States of America in trust for Jesse William Couture, Flathead allottee No. 1497.
   When not under IRA:
   (a) For land now held in trust by an Indian (Use deed Form 5-183b)
   James Sweeney, Fort Peck allottee No. 1686.
   (b) For land now in fee simple
   Conveyance under authority of the Act of June 30, 1932
   (47 Stat. 474) Use deed Form 5-185.
   James Sweeney, Fort Peck allottee No. 1686.

3. When conveyance is to result in fee simple title:
   (a) To an individual: John Smith
   (b) To a private coporation: The Polson Sheep Company, a corporation.
   (c) To a public corporation: Dewey County, South Dakota, a public corporation.

(b) Conveyance in co-tenancy:

1. When conveyance is intended to create a tenancy in common: When grantees are to take in equal shares, follow the outline given for conveyance in severalty but name each of the individual grantees, as: The United States of America in trust for Jesse William Couture, Flathead allottee No. 1497, and Felicite Pierre McDonald, an un-

INSTRUCTIONS
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DESIGNATION OF GRANTEE (continued)

allotted Flathead Indian.

2. When grantees are to acquire unequal shares: Show the portion each is to receive following his name, thus: Jesse William Couture, Flathead allottee No. 1497, a 2/3 undivided interest, and Felicite Pierre McDonald, an unallotted Flathead Indian, a 1/3 undivided interest.
3. To create a joint tenancy: Use the same designations in each case as shown above but add words that show the intention to create a joint tenancy, thus: John Smith and Jessie Smith, husband and wife, as joint tenants with the right of survivorship and not as tenants in common.

(c) Creation of convential life estates: (infra LIFE ESTATES)

ADDRESS OF GRANTEE

(a) When conveyance is to the United States in trust for the tribe, the address shown in the deed should be that of the agency, as Poplar, Montana, or Browning, Montana.

(b) When conveyance is to the United States in trust for an individual, the address shown in the deed should be that of the individual's post office, as Wolf Point, Montana, or Ronan, Montana.

THE CONSIDERATION CLAUSE

(a) When the consideration is to be in money, the actual purchase price should be shown as: Eight hundred fifty and No/100 ($850.00)

(b) When the consideration is an exchange of lands of equal value: For and in consideration of the exchange of lands of equal value. (Delete the words "dollars, in hand paid, the receipt of which is hereby acknowledged")

(c) When the consideration is partly cash and partly other lands: For and in consideration of the sume of $400.00 and the exchange of other lands valued at $450.00.

INSTRUCTIONS
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THE CONSIDERATION CLAUSE (continued)

(d) When the consideration is the settlement of reimbursable debt: For and in consideration of the settlement of reimbursable indebtedness in the amount of $850.00.

(e) When the consideration is partly money and partly personal property: For and in consideration of the sum of $400.00 and personal property valued at $450.00.

(f) Wherever possible show the kind of personal property: Example: For and in consideration of the sum of $400.00 and livestock valued at $450.00.

(g) When only personal property is the consideration: For and in consideration of cattle valued at $850.00.

(NOTE: Try to show what kind of personal property whenever possible, but when various kinds are involved the general term "personal property (or livestock)" may be used to cover.)

(h) When the consideration is an exchange assignment:
1. For other lands of equal value: For and in consideration of an exchange assignment of other lands of equal value.
2. For the same lands: For and in consideration of an exchange assignment of the lands herein conveyed.
3. For other lands and personal property together of equal value: For and in consideration of cattle valued at $400.00 and an exchange assignment of other lands valued at $450.00.
4. For other lands and cash together equal in value: For and in consideration of $400.00 and an exchange assignment of other lands valued at $450.00.

(i) When the consideration is in settlement of a revolving credit fund loan: For and in consideration of the settlement of indebtedness to the Blackfeet Tribe in the amount of $346.25.

(NOTE: In cases where no cash consideration is involved such as in b,d,g, h-1, h-2, h-3 and i above, delete the words, "dollars, in hand paid, the receipt of which is hereby acknowledged.")

INSTRUCTIONS
for
DRAFTING AND EXECUTION OF DEEDS

THE CONSIDERATION CLAUSE (continued)

(j) When the conveyance is a gift to a friend or relative: For and in consideration of One Dollar, love and affection.

(k) When the conveyance is a gift to a tribe: For and in consideration of One Dollar, and other valuable consideration.

(NOTE: Avoid erasures. When correction is necessary draw line through the part in error but do not obliterate. Insert the correction immediately above and initial correction.)

THE LAND DESCRIPTION

Show the name of the county and state in which the land is situated, as: Situated in Roosevelt County, State of Montana. The description of the land should be accurate, must correspond to the description shown in the certificate of appraisment and other papers relating to the transaction and may be in simple abbreviated form, as:

NW¼ of Sec. 2, T. 26 N., R. 45 E. M P.M., containing 160 acres.

Also show the name of the reservation if the land is in trust or restricted status on a reservation.

PLURAL AND SINGULAR WORD FORMS

Blanks are provided so that such words as "party", "do", "him", "his", etc. may be formed to agree with the number and sex of the grantors and grantees.

The grantee in all cases where land is being conveyed to the United States of America in trust is to be considered as singular and referred to by the pronoun "it".

DELETIONS

When the party of the second part is the United States of America in trust for________ deletions should be made in the covenant and habendum clauses, crossing out the words "heirs, executors, and administrators" and typing in the words, "its successors and assigns".

INSTRUCTIONS
for
DRAFTING AND EXECUTION OF DEEDS

SIGNATURES

Signatures should be in ink and should be spelled the same as in the designation of grantee clause (at the tope of the deed). Allotment numbers, marital status, and sex need not be shown but if such information has not been shown in the designation clause, it may be shown here with the signature. Signatures should be witnessed by at least two persons who should sign as witnesses in the space provided.

When the grantor's signature in the deed disagrees with the designation of the grantor in the deed or with other documents and records, the discrepancy may be clarified by the use of an Affidavit of Identity.

DEEDS CONVEYING UNDIVIDED FRACTIONAL INTERESTS

When it is desired to convey only a fractional interest, the following instructions apply:

(a) Designation of grantor: Name only the grantor or grantors who are to convey by the instrument being drawn.

(b) Consideration: Should be shown as the actual amount the grantor or grantors will receive, as, if the grantors are conveying a 1/10 interest and the tract is valued at $1000, the consideration would be $100.

(c) Land description would be written as, An undivided 1/10 interest in and to the NW$\frac{1}{4}$ of Sec. 2, T. 27 N, R. 26 E. M.P.M., containing 160 acres.

ACKNOWLEDGMENTS

Acknowledgment should be in accordance with the law of the state where the land is located.

SIGNATURE OF THE SPOUSE

The purpose of having the spouse join the owner in the execution of the deed is to extinguish the common law rights of dower and curtesy and the statutory right of homestead. The rights of dower and curtesy always exist unless abolished by statute.

INSTRUCTIONS
for
DRAFTING AND EXECUTION OF DEEDS

AUTHORITY CLAUSE

(a) When authority for the conveyance is found in the Indian Reorganization Act, there should always appear in the space following the land description, citation of this law. Illustration:

> This conveyance is made in accordance with the provisions of the Act of June 18, 1934 (48 Stat. 984)

(b) When authority for the conveyance is found in specific legislation, there should appear in the space following the land description citation of the law authorizing the conveyance. Illustration:

> This conveyance is made in accordance with the provisions of the Act of________(Stat.______)

IRRIGATION LIEN CLAUSE

When the land is within an Indian irrigation project, deeds must contain requirements of 25 CFR 151.1

There must appear in the space following the land description a clause as follows: (Example for lands on Fort Peck and Blackfeet reservations)

This land is within the ______________unit of the FORT PECK Indian Irrigation Project. A first lien exists created by the Acts of May 18, 1916 (39 Stat. 128), March 7, 1928 (45 Stat. 210), and July 1, 1932 (47 Stat. 564) in favor of the United States for unpaid construction, operation, and maintenance costs of the irrigation project.

RESERVATIONS AND EXCEPTIONS

Example showing a reservation: N½ of Sec. 1, T. 29 N, R. 4 E, M.P.M., containing 320 acres, reserving 25% of the gas, oil and mineral rights for 20 years from date of this deed.

Example showing a reservation: N½ of Sec. 1, T. 29 N, R. 4 E, M.P.M., containing 320 acres, reserving the SW¼NW¼ for five years from date of this deed for purposes of watering and holding livestock.

Example showing a reservation: N½ of Sec. 1, T. 29 N, R. 4 E, M.P.M., containing 320 acres, reserving the use of the same for life of the grantor.

INSTRUCTIONS
for
DRAFTING AND EXECUTION OF DEEDS

IRRIGATION LIEN CLAUSE (continued)

Example showing an exception: N½ of Sec. 9, T. 5 W, R. 8 W, M.M., containing 320 acres, excepting one frame barn 24 x 32 feet in dimensions.

Grantors are often inclined to show small parcels of land as exceptions without clearly defining the boundaries, as for example: ". . . .excepting 2½ acres in the southwest corner thereof". This is not good conveyancing for the reasons, (1) the exact boundaries of the land conveyed are not shown and (2) the land to be retained by the grantor need not be included in the deed. When the grantor desires to retain 2½ acres in the southwest corner the description should be written to cover only the land conveyed and no exception made. For example: NE¼, N½NW¼, SE¼NW¼, N½SW¼NW¼, SE¼SW¼NW¼, N½SW¼NW¼, SE¼SW¼ SW¼NW¼ Sec. 1, T. 9 N, R. 2 W, M.M., containing 317.5 acres.

CITATION OF RESERVATIONS IN PATENTS

Some of the allotment acts provide for reservations in patents. Even though such reservation has been omitted in the patent it should be cited in subsequent deeds. Such citation in deeds serves the purpose of giving notice to the purchaser and the public of the existence of such reservation. The act providing for the reservation should be cited. Example: SE¼NW¼ of Sec. 31, T. 34 N, R. 6 W, M.P.M., containing 40 acres. There is reserved for the benefit of the Blackfeet Tribe of Indians all minerals, including coal, oil, and gas in the lands herein described in accordance with the provisions of the Act of June 30, 1919 (41 Stat. 17).

CITATION OF RESERVATIONS IN PREVIOUS CONVEYANCES

Reservations made in previous deeds should be cited in each subsequent deed to show clearly and properly what is being conveyed and to give notice of such easement or right in a third party. Example: (Following the land description) There is reserved by John Doe in deed dated February 3, 1944, recorded in Book 15, page 126, 25% of the gas, oil and mineral right. in the lands herein described for a period of 20 years from the date of the said deed.

RESTRICTED FEE, Definition of: An Indian restricted fee title is a fee title restricted (limited) as to alienation.

RESTRICTED FEE, Creation of: An Indian restricted fee may be created by a grantor holding a fee simple (fee simple absolute) title.

INSTRUCTIONS
for
DRAFTING AND EXECUTION OF DEEDS

RESTRICTED FEE, Creation of: (continued)

To create a restricted fee, words of restriction must be written in the instrument of conveyance, following the land description.

The usual words creating an Indian restricted fee are as follows:

> Subject to the condition that while the title is in the grantee or heirs the land herein described shall not be alienated or encumbered without the consent of the Secretary of the Interior.

RESTRICTED FEE, Conveyance of: When land held in Indian Restricted fee title is conveyed and it is intended that the restriction should be continued, the words of restriction should be written in the deed except when using deed Form 5-183b in which the printed language of the deed provides for the continuation of the same ownership status.

DEED TO RESTRICTED INDIAN LAND SPECIAL FORM, 5-183b

This form is used to convey allotted lands between Indians of reservations not under IRA but only when the restricted or trust status is a result of an act of Congress, where the restricted or trust status was created by words in the patent.

When consideration is not held in trust, delete the words, "Held in trust by the United States for the benefit of said party (ies) of the second part".

LIFE ESTATE, Definition of: An estate of freehold held only during the term of some certain person's life. See Thompson's Abstracts and Titles, Secs. 40-49, which deal with conventional life estates. For legal life estates see Dower, Curtesy, and Homesteads.

Life Estate for Life of Grantor, Creation of: This is a kind of a reservation, The words reserving the life estate should follow the land description. Example: "__________containing 320 acres, more or less, but reserving to the party of the first part a life estate in the said lands."

Example to reserve a life estate in only a portion of the lands conveyed: "_______, containing 320 acres, more or less, but reserving to the party of the first part a life estate in that portion of the said lands described as follows:__________."

INSTRUCTIONS
for
DRAFTING AND EXECUTION OF DEEDS

LIFE ESTATE, Definition of: (continued)

Estate for the Life of the Grantee, Creation of: This is created by words following the designation of the grantee. Example: "John Smith, for his life". Also, delete the word "heirs" as pertaining to the grantee.

Form No. 5-101
(Nov. 1944)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

CONSENT TO SALE

WHEREAS, the undersigned, is the owner of an undivided ____________ interest in those certain lands described as ____
____
which were allotted to ____,
deceased allottee No. ______________ of the ______________________________ Reservation, and

WHEREAS, I have been advised that under authority of the Act of June 25, 1910 (36 Stat. 855) and other applicable provisions of law, the Secretary of the Interior or his duly authorized representative proposes to sell the above-described land;

NOW THEREFORE, I hereby consent to the sale of said lands and request the Secretary of the Interior or his duly authorized representative to sell and convey all of my right, title and interest therein, and I hereby agree to accept the highest bid thereon provided it is not inconsistent with the present fair market value as indicated by the appraisal, subject to payment to me or deposit to my credit at the ______________________________ Indian Agency of my proportionate share of the sale price. It is agreed that rental payment (crop or cash) will accrue to the purchaser, effective as of the beginning of the next annual lease period and that all advance rental payments collected shall be deducted from the purchase price.

WITNESSES:

______________________________ ______________________________

______________________________ ______________________________

EXHIBIT NO. 5

ORDER TRANSFERRING INHERITED INTERESTS IN INDIAN LAND

WHEREAS, under authority of the allotment act of ____________

____________________, the land described below was duly allotted to

______________________________________, deceased ______________

allottee No. ____ of the ________________________________ Reservation

__________________ for which trust patent was issued ______________

and

WHEREAS, the original twenty-five year trust period provided for in said patent has been duly extended, and

WHEREAS, Section 1 of the Act of June 25, 1910 (36 Stat. 855), provides the Secretary of the Interior with the exclusive authority to determine the heirs of deceased Indians, and also authorizes said Secretary, in his discretion, to cause the lands allotted to deceased Indians to be sold if he shall decide one or more of the heirs to be incompetent, and

WHEREAS, the said ____

died on or about ______________________________ since which date the heirs of the said allottee have been duly determined by the Secretary of the Interior pursuant to the authority hereinbefore cited, ____________ of whom ____________ incompetent, and

WHEREAS, the Tribal Council of the __________________________

at a meeting duly held ______________________________________, approved the acquisition of the land herein below described and requested the Secretary to purchase the land, title to which will be taken in the name of the United States in trust for the ____________________

__________________________, pursuant to the act of ___ ____________________,

and

WHEREAS, deeming it to be for the best interest of the heirs of the above-named deceased Indian allottee, and the Indians of the said Indian Reservation, that the land herein described be reacquired for said Indians, and having previously caused said land to be appraised by competent appraisers who have fixed the

ORDER TRANSFERRING INHERITED INTERESTS IN INDIAN LAND (continued)

value of the same at the sum of ____________________________

($__________), which sum the Officer in charge of the above mentioned Reservation, pursuant to authority heretofore granted to him, has deposited to the credit of the estate of the said deceased allottee for distribution, upon issuance of this order, to the heirs of said estate, according to their respective interests therein as heretofore found and determined by this Department, and whereas the adult competent heirs have consented to the sale as evidenced by the attached consents of sale,

NOW, THEREFORE, by virtue of the authority conferred upon the Secretary of the Interior by the statutes hereinabove referred to, and other applicalbe provisions of law, pursuant to authority delegated by Secretarial Order No. ______ of __________, 19__

(__F.R. ____________), and Order No. _____ of ______________,

19 ___(__F.R. ________) of the Commissioner of Indian Affairs,

I hereby declare that all right, title, interest, claim or demand of any nature whatsoever of the heirs of the above named deceased allottee in and to the

____

____

____ Meridian,

within the ______________________ Reservation is hereby transferred to the United States in trust for the __________________

________________________ for use and disposition as other tribal land within said Indian Reservation. The conveyance so made is subject to all valid existing rights-of-way and liens for repayment of irrigation charges, if any.

Done at the City of ______________________ and dated

____________________________.

Area Director

CHAPTER 2
EXHIBIT NO. 6

Director, Bureau of Land Management

Washington 25, D. C.

Through: Commissioner
Bureau of Indian Affairs

Dear Sir:

I have approved the sale of land described as ____________________
____
(Insert legal description, including acreage, meridian, and State)
______________________________ ______________________________
included in the allotment of ______________________________
______________________________ ____________ allottee No. __________
(if deceased, state) (Tribe) (If Public Domain,
______________________________, pursuant to authority
include Land Office and Serial No.)
delegated by Secretarial Order No. ______ of ____________________, 19__
(_____F.R.________), and Order No. ________ of the Commissioner, Bureau of
Indian Affairs, dated ____________________, 19___ (_____F.R.__________).

It is requested that a patent in fee be issued to ______________
____________________ ____________________, the purchaser, for the above-described land, provided there are no reasons appearing on the records of the Bureau of Land Management why such patent should not be issued.*

Sincerely yours,

Area Director

*Add any conditions or reservations necessary, if they have not been included with the description.

EXHIBIT NO. 7

Mr. Marion Clawson
Director, Bureau of Land Management
Washington 25, D. C.

Through: Commissioner of
Indian Affairs

My dear Mr. Clawson:

I have approved the petition of the heirs of ____________
________________________ deceased ________________ allottee
No. ______, for the partition of the allotment of the deceased
allottee, described as the ______________________________
____,
(Give description of land and acreage)
pursuant to authority delegated by Secretarial Order No.________ of
______________, 19___ (___ F.R.__________), and Order No.___
of ____________, 19 ___ (___ F.R.__________) of the Commissioner
of Indian Affairs.

It is requested that appropriate trust patents be issued
to the heirs for the lands set apart to them as follows:

To______________________________, ________________________
(Name of heir) (Description of land)
____

To______________________________, ________________________
____

To______________________________, ________________________
____

To______________________________, ________________________
____

Area Director

Form No. 5-105
May, 1955

EXHIBIT NO. 3

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Application for Patent in Fee or for the Sale of Indian Land

Allottee ______________ No. ________ Reservation ______________

____
(date)

Application is hereby made for (patent in fee) (supervised sale)* for the following described land: ______________________________
____
containing ______________ acres, more or less.

In justification of this application, true statements are made to the following items (item 15 only is applicable for the sale of inherited lands in multiple ownership):

1. Age _____
2. Date of Birth _______
3. Degree of Indian Blood ______
4. Single / Married (strike out one)
5. Education: Years in elementary school _______ High School _____ College _____
6. The following persons are dependent upon me for support (Give names, ages and relationship) ______________________________
____
7. I am enrolled as a ______________________ Indian
(Name of Tribe)
8. Permanent address ______________________________
9. The amount of my annual income is $____________

*Strike out words not applicable.

EXHIBIT No. 8

10. My income is obtained from the following sources: ____________

____

11. If receiving public assistance grants from the State or general assistance from the Bureau of Indian Affairs, or funds from the Veterans Administration, Social Security, or any regular public benefit, state kind and amount. (If none, state none.)

12. If indebted to the United States, state amount and purpose of indebtedness. (If not, state none.) ____________

____

13. I do (do not)* live on or make personal use of the land covered by this application.

14. The land is leased and the annual rent received is $__________ (If not leased, state none.)

15. a. I intend to use the land for the following purposes after receiving a patent in fee which becomes taxable from date of issuance:

b. I intend to use the proceeds of sale for the following purposes:

____

____

____

I (We)*authorize the sale of the land heretofore described and hereby accept the highest bid thereon provided it is not inconsistent with the present fair market value as indicated by the appraisal. It is agreed that rental payment (crop or cash)*will accrue to the purchaser, effective as of the beginning of the next annual lease period and that all advance rental payments collected shall be deducted from the purchase price.

*Strike out words not applicable.

EXHIBIT No. 8

It is also agreed that the proceeds arising from the sale of this land may be disposed of in accordance with regulations prescribed by the Secretary of the Interior.

____

____

____

____

Subscribed and sworn before me
this ___ day of ___________ 19__.
I hereby certify that the effect of this
application was explained to and fully
understood by the applicants and the
application is hereby approved.

____
Title

Form No. 5-110n
May, 1955

EXHIBIT NO. 9

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Report on Sale of Indian Land

Name of Allottee ______________ No. ________ ________ Reservation

Item No. ______________ Invitation to Bid No. ____________

Appraised Value ____________

Name of Highest Bidder ______________________________

Amount Deposited with Highest Bid $__________

Names and amount of Bids received on subject tract:

______________________________ $______________

______________________________ $______________

______________________________ $______________

______________________________ $______________

It is recommended that the highest bid be accepted and that the (deed) (request for patent in fee)* be approved.

____
Title

*Strike out words not applicable.

FORM 5-114
MAY 1963

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

INVITATION, BID AND AWARD

(SALE OF INDIAN LANDS)

ISSUED BY:

DATE:

INVITATION NO.____________________. BIDS WILL BE RECEIVED UNTIL AND OPENED AT ____________M, LOCAL TIME, ____________________
DATE

INVITATION FOR BIDS

SEALED BIDS IN DUPLICATE, SUBJECT TO THE TERMS AND CONDITIONS OF THIS INVITATION, ITS SCHEDULE AND STIPULATED PROVISIONS, WILL BE RECEIVED AT THE ABOVE OFFICE UNTIL ABOVE DESIGNATED TIME, AND AT THAT TIME PUBLICLY OPENED. ALL BIDS ARE SUBJECT TO ACCEPTANCE BY THE RESPECTIVE INDIAN OWNERS AND FINAL APPROVAL BY THE AREA DIRECTOR. THE RIGHT IS RESERVED TO REJECT ANY AND ALL BIDS AND TO DISAPPROVE ANY DEED MADE ON AN ACCEPTED BID IN ACCORDANCE WITH 25 C.F.R. 241 AND SPECIAL DELEGATED AUTHORITIES. EACH BID ON INDIAN LAND OFFERED FOR SALE MUST BE ACCOMPANIED BY A CASHIER'S CHECK, CERTIFIED CHECK, OR POSTAL MONEY ORDER PAYABLE TO THE BUREAU OF INDIAN AFFAIRS FOR NOT LESS THAN 10% OF THE OFFER MADE.

GENERAL INFORMATION AND INSTRUCTIONS TO BIDDERS ARE CONTAINED IN THE TERMS AND CONDITIONS ON THE REVERSE HEREOF.

SCHEDULE OF BID

ITEM NO.	ALLOTMENT NO.	NO. OF ACRES	AMOUNT OF BID	ITEM NO.	ALLOTMENT NO.	NO. OF ACRES	AMOUNT OF BID

THE UNDERSIGNED AGREES THAT IF THE AMOUNT OFFERED FOR ANY ITEM OR ITEMS IN THE ABOVE BE ACCEPTED, HE WILL WITHIN 30 CALENDAR DAYS FROM DATE OF RECEIPT OF NOTICE OF AWARD DEPOSIT WITH THE ISSUING OFFICER BUREAU OF INDIAN AFFAIRS THE FULL AMOUNT OF HIS OFFER TOGETHER WITH STIPULATED SALES FEES AND THAT FAILURE TO MAKE SUCH DEPOSIT WITHIN THE SPECIFIED TIME WILL CONSTITUTE A FORFEIT OF THE 10% DEPOSIT.

SALES FEES ARE AS FOLLOWS:

SIGNATURE OF BIDDER

NAME OF BIDDER (PRINT OR TYPE)

ADDRESS (PRINT OR TYPE)

NOTICE OF AWARD TO SUCCESSFUL BIDDER

YOU ARE HEREBY NOTIFIED THAT YOU ARE THE SUCCESSFUL BIDDER ON THE FOLLOWING ITEMS:

BALANCE OF THE PURCHASE PRICE IN THE AMOUNT OF $________________SHALL BE REMITTED TO THE ABOVE ISSUING OFFICE NOT LATER THAN

____
DATE

Reverse of Form 5-114
May 1955

Illustration 10

INSTRUCTIONS TO BIDDERS
TERMS AND CONDITIONS OF THE INVITATION FOR BIDS

1. MARKING AND MAILING BIDS – Bids, with their guaranties, must be securely sealed in suitable envelopes, addresse the issuing office and marked on the outside with the invitation number and date of opening, both of which may be found in the block opposite the name of the issuing office on the front of this form.

2. PREPARATION OF BIDS – Unless otherwise directed in the invitation, bids shall be submitted in duplicate. Forms furnished, or copies thereof, shall be used, and strict compliance with the requirements of the invitation, and these instructions, is necessary. Special care should be exercised in the preparation of bids. Bidders must make their own estimates of the facilities and difficulties attending the performance of the proposed contract including local conditions, uncertainty of weather, and all other contingencies. All item numbers and prices shall be fully and clearly set forth. Copies of the bids shall be identical. The proper blank spaces in the bid shall be suitably filled in.

3. SIGNATURE TO BIDS – Each bid must give address of the bidder and be signed by him with his usual signature. Bids by partnerships must furnish the full names of all partners and must be signed with the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing. Bids by corporations must be signed with the legal name of the corporation, followed by the names of the State of incorporation and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid by a person who affixes to his signature the word "president," "secretary," "agent," or other designation, without disclosing his principal, may be held to the bid of the individual signing. When requested by the Government, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

4. CORRECTIONS – Erasures or other changes in the bids must be explained or noted over the signature of the bidder.

5. TIME FOR RECEIVING BIDS – Bids received prior to the time of opening will be securely kept, unopened. The officer whose duty it is to open them will decide when the specified time has arrived, and no bid received thereafter will be considered. No responsibility will attach to an officer for the premature opening of a bid not properly addressed and identified. Telegraphic bids will not be considered, but modifications by telegraph of bids already submitted will be considered if received prior to the hour set for opening.

6. WITHDRAWAL OF BIDS – Bids may be withdrawn on written or telegraphic request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid confers no right for the withdrawal of the bid after it has been opened.

7. BIDDERS PRESENT – At the time fixed for the opening of bids, their contents will be made public for the information of bidders and others properly interested, who may be present either in person or by representative.

8. AWARD OR REJECTION OF BIDS – The award will be made to the highest responsible bidder complying with conditions of the invitation for bids, provided his bid is reasonable and it is to the interest of the Indian owner and the United States to accept it. The bidder to whom the award is made will be notified at the earliest possible date. The Area Director, however, reserves the right to reject any and all bids and to waive any informality in bids received whenever such rejection or waiver is in the interest of the Indian owner or the United States.

9. ERRORS IN BID – Bidders or their authorized agents are expected to examine the maps, circulars, schedule, and all other instructions pertaining to the invitation to bid which will be open to their inspection. Failure to do so will be at the bidder's own risk, and he cannot secure relief on the plea of error in the bid.

10. Government appraisals of the herein described property are confidential and will not be made available.

11. The land advertised herein for sale will be sold subject to existing leases of record with the Bureau of Indian Affairs. Rental payments (crop or cash) will accrue to the purchaser, effective as of the beginning of the next annual lease period. In the event advance rental payments have been collected by former owner or owners, such amounts will be deducted from the purchase price.

12. Beneficial use and occupancy of lands purchased which lie within designated range units will be transferred to the purchaser at the end of the current use or pay period.

13. When the Indian land offered for sale is irrigable under a Federal Irrigation Project and the land has been designated being part of a project, there exists in accordance with existing laws, a lien on the land for the payment of unpaid constr n costs. The purchaser, if other than Indian, will be required to enter into a contract for the payment of such charges a costs on a per acre basis. The contract will provide for annual payment of these charges on a due date of each year. Any c all delinquent operation and maintenance charges are to be deducted from the proceeds of the sale.

14. Minerals, including oil and gas, are to be sold with the land advertised unless reserved as indicated on the attached Schedule.

FORM 5-113
MAY 1955

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

PAGE____OF
______PAGES

SCHEDULE OF LANDS TO BE SOLD

(ATTACHMENT TO FORM 5-114)

ITEM NO.	ALLOTMENT NO.	LAND DESCRIPTION AND INFORMATION

CHECK LIST FOR INDIAN PATENTS

NAME:

Is name given in full? If initials only, specify that there is no full first name. Check for correct spelling of name.

DESIGNATION OF PATENTEE:

Is patentee designated properly as allottee, heir, or purchaser? Where more than one patentee is shown have you designated:

(a) fractional interests, if any;
(b) tenants in common; or
(c) joint tenants

Is patentee a corporation? If so, is copy of articles of incorporation included, or reference to prior request where it may be found?

ALLOTMENT NUMBER:

Is the allotment number correct? Does it cover the land requested to be patented?

DESCRIPTION OF LAND:

Is land description correct? Does it conform to the public land surveys? Does it include the meridian and State? If by metes and bounds, has BLM been requested to prepare supplemental plat?

RESERVATIONS:

Minerals - What minerals are to be reserved?
Under what act of Congress are they reserved?
Does the reservation apply to all the lands in the request?
If not, specify which lands are covered by the reservation.
Is timber to be reserved? If so, under what act of Congress?

LIENS AND/OR MORTGAGES:

Is there an irrigation lien on the land? If so, specify giving act of Congress.

NOTATIONS OF RIGHTS OF WAY REQUIRED IN PATENTS

Where lands are entered subject to rights of way granted or authorized under the acts listed below, reservation of such rights of way in the final certificates or patents is required.

(a) Rights of way for Railroads.

June 8, 1872, 17 Stat., 339.
June 8, 1872, 17 Stat., 340.
June 23, 1874, 18 Stat., 274.
May 30, 1888, 25 Stat., 160.
September 1, 1888, 25 Stat., 452-455.
February 12, 1889, 25 Stat., 660.
July 18, 1894, 28 Stat., 112.
June 4, 1898, 30 Stat., 436.
March 1, 1899, 30 Stat., 918.
March 2, 1899, 30 Stat., 990.
April 17, 1900, 31 Stat., 134.
March 3, 1909, 35 Stat., 781.
May 6, 1910, 36 Stat., 349.

(b) Rights of way for purposes other than Railroads.

June 4, 1897, 30 Stat., 11-35.
March 1, 1899, 30 Stat., 941.
March 3, 1901, 31 Stat., 1083, Sec. 3.
March 11, 1904, 33 Stat., 65.
February 1, 1905, 33 Stat., 628, Sec. 4.
~~March 4, 1911, 36 Stat., 1253.*~~
March 4, 1913, 37 Stat., 828-843.
February 25, 1920, 41 Stat., 437, Sec. 28, as amended
  by the act of August 21, 1935 (49 Stat., 678).
November 9, 1921, 42 Stat., 212, Sec. 17.
December 5, 1924, 43 Stat., 704, Sec. 4, Sub. Sec. P.
March 31, 1933, 48 Stat., 22.
February 5, 1948, 62 Stat., 17.

Roads, trails, telephone lines, etc., actually constructed by the United States must be excepted from any final certificate and patent, with the rights of the United States to maintain, operate, or improve the same so long as needed or used for or by the United States. (Dept. Instr., Jan. 13, 1916, 44 L.D. 513).

* The final certificate and patent must contain a reservation under section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1063), as amended by the act of August 26, 1935 (49 Stat. 846), if the right of way is for the development or transmission of hydro-electric power (47 L.D. 595, 598).

NOTATIONS OF RIGHTS OF WAY NOT REQUIRED IN PATENTS

Where lands are entered subject to rights of way granted or authorized under the acts listed below, the rights of way are fully protected by the terms of the statutes as against subsequent adverse rights and no reservation of such rights of way in the final certificates or patents is required.

(a) Rights of way for Railroads.

March 3, 1875, 18 Stat., 482.
July 3, 1882, 22 Stat., 148.
February 15, 1887, 24 Stat., 402.
March 2, 1887, 24 Stat., 446.
February 18, 1888, 25 Stat., 35.
May 1, 1888, 25 Stat., 113.
February 28, 1902, 32 Stat., 43.
May 14, 1898, 30 Stat., 409.

(b) Rights of way for Purposes Other than Railroads.

March 3, 1891, 26 Stat., 1095.
January 21, 1895, 28 Stat., 635.
May 21, 1896, 29 Stat., 127.
June 7, 1897, 30 Stat., 67.
May 11, 1898, 30 Stat., 404.
February 15, 1901, 31 Stat., 790.*
March 3, 1901, 31 Stat., 1084, Sec. 4.
June 30, 1906, 34 Stat., 801.
March 4, 1915, 38 Stat., 1188.
March 4, 1917, 39 Stat., 1197.
June 5, 1920, 41 Stat., 983.
March 1, 1921, 41 Stat., 1194.
December 21, 1928, 45 Stat., 1057.

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* The final certificate and patent must contain a reservation under section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1063), as amended by the act of August 26, 1935 (49 Stat. 846), if the right of way is for the development or transmission of hydro-electric power (47 L.D. 595, 598).

Exhibit 16

AUTHORIZATION TO ACCEPT BID ON INDIAN LAND OFFERED AT ADVERTISED SALE

____
Place

____
Date

Whereas, I have applied for a sale of my __________ interest in land described as: ____
________________________________, and

Whereas, such land is to be advertised for sale in accordance with regulations contained in 25 CFR 121; and

Whereas, I have been informed that the appraised value of my interest in the described land is $__________, and

Whereas, I am willing to sell my interest in this land for not less than this appraised value or for not less than $__________, whichever amount is greater,

Now therefore, the ____________________ Area Director, or his authorized representative, is hereby authorized, in his discretion, to accept on my behalf any bid which is equal to or in excess of the amount of $________

____
Signature of Owner

(Do not write in this space)

5-5446
(1956 Rev.)

Land being conveyed was allotted to James Smith
Allottee No. 124-2431

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

DEED TO RESTRICTED INDIAN LAND

THIS INDENTURE, Made and entered into this 10th day of February one thousand nine hundred and eighty-four, by and between MARIAN SMITH, a single man, ID#124-U3621, MARY ADAMS, ID#12403622 and JOHN ADAMS, her husband.

of The Yakima Tribes of Indians ______, parties of the first part, and The United States of America in trust for JOHN JONES, unallotted Yakima, ID#124-4221 of Toppenish, Washington, party of the second part:

WITNESSETH, That said part______ of the first part, for and in consideration of the sum of Ten thousand and no/100 - - - - - - - -($10,000)- - - - - - - - - dollars, in hand paid, the receipt of which is hereby acknowledged, do____ hereby grant, bargain, sell, and convey unto said party of the second part the following-described real estate and premises situated in Yakima County, State of Washington on the Yakima Indian Reservation, to wit:

E½NW¼ SE¼ Section 10, T. 10N., R20E, W.M., containing 20 acres more or less, receiving therefrom a right-of-way twenty feet wide along the east boundary for a road and utility lines to the SW¼ NE¼ Section 10, T.10N., R20E, W.M.,; subject to a highway right-of-way to the State of Washington, approved December 10, 1948, Portland Area Office, title recording #124-327831. This conveyance is made in accordance with the provisions of the Act of January 12, 1983; 96 Stat. 2515.

together with all the improvements thereon and the appurtenances thereunto belonging. And the said parties of the first part, for themselves and their heirs, executors, and administrators, do ______ hereby covenant, promise, and agree to and with the said party of the second part, its successors and ~~heirs~~ and assigns, that they will forever warrant and defend the said premises against the claim of all persons, claiming or to claim by, through, or under them only.

To have and to hold said described premises unto the said party of the second part, its successors ~~heirs, executors, administrators~~ and assigns, forever.

IN WITNESS WHEREOF, That said party of the first part have hereunto set the hands and seals the day and year first-above written.

WITNESSES:
(not necessary)

____

____

Marian Smith [SEAL]

Mary Adams [SEAL]

John Adams [SEAL]

______________________________ [SEAL]

Acknowledgments must be in accordance with the forms prescribed by the State in which the land is situated.

STATE OF Washington }
COUNTY OF Yakima } ss:

BE IT REMEMBERED, That on this 10th day of February, A. D. 19 84 before the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Marian Smith, Mary Adams and John Adams

to me personally known to be the identical person s who executed the within instrument of writing, and such person s duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal on the day and year last hereinabove written.

(Notary Signature)

(Title)

My commission expires

UNITED STATES
DEPARTMENT OF THE INTERIOR

The within deed is hereby approved:

Pursuant to authority designated to the Superintendent by Portland Area Redelegation Order No. 3 (34 F.R. 15813, October 14, 1959), as amended June 7, 1978.

Superintendent, Yakima
Indian Reservation

The within deed is recorded in the Office of Indian Affairs in Volume ________, Page ________, Inherited Indian Land Deed Book.

INDIAN LAND DEED

FROM

TO

COUNTY OF ________

STATE OF ________

This instrument was filed for record this ________ day of ________, 19__, at ________ o'clock ________ M., and duly recorded in Book No. ________, at page ________

Register of Deeds.

U. S. GOVERNMENT PRINTING OFFICE 16—[illegible]—1

HANDOUT II D

5-5447

(Do not write in this space)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

DEED TO RESTRICTED INDIAN LAND SPECIAL FORM

THIS INDENTURE, made and entered into this day of 19 by and between

an Indian of the in the State of part of the first part, and

also a restricted Indian of said reservation, part of the second part:

WITNESSETH, That whereas the lands hereinafter described were allotted to or inherited by the said part of the first part under the provisions of legislation by Congress pursuant to which said lands are restricted or held in trust by the United States for benefit of said grantor and are not subject to taxation; nor to alienation or encumbrance without the consent of the Secretary of the Interior, and whereas the said part of the second part being also a restricted Indian desires to acquire said herein-described lands subject to the same conditions, restrictions, and limitations as to taxation, alienation, or encumbrance as now rest thereagainst;

NOW, THEREFORE, for and in consideration of the sum of $ held in trust by the United States for the benefit of said part of the second part, the receipt of which sum is hereby acknowledged, the said part of the first part does hereby transfer, set over, and convey to and unto the said part of the second part all right, title, and interest of the said part of the first part in and to the lands and premises situated in the County of State of described as:

Together with all improvements thereon and appurtenances thereunto belonging, subject to the express condition that the execution of this deed by the party or parties hereto or its approval by the Secretary of the Interior shall not operate in any manner to remove any of the restrictions now resting against said lands, or to remove any trust or other conditions imposed upon said land as expressed in the original trust or any other patent issued therefor, or any part thereof; it being distinctly understood and agreed that the scope and intent of this deed is simply to transfer and convey such right, title, and interest as the part of the first part now ha in such lands to the said part of the second part subject to the conditions, restrictions, and limitations as now rest thereagainst in the hands of the part of the first part.

TO HAVE AND TO HOLD said above-described premises subject to all the conditions above stated unto the said part of the second part heirs, executors, administrators, and assigns forever.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal the day year first hereinabove written.

WITNESSES:

(SEAL)

(SEAL)

(SEAL)

(SEAL)

(SEAL)

(SEAL)

Acknowledgments must be in accordance with the forms prescribed by the State in which the land is situated.

STATE OF)
) **SS:**
COUNTY OF)

BE IT REMEMBERED, That on this **day of** **A.D., 19** **before the undersigned, a** **in and for the County and State aforesaid, personally appeared**

to me personally known to be the identical person who executed the within instrument of writing, and such person duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal on the day and year last hereinabove written.

____

____
(Title)

UNITED STATES
DEPARTMENT OF THE INTERIOR

My commission expires ______________

The within deed is hereby approved:

____

INDIAN LAND DEED

From

To

COUNTY OF ______

STATE OF ______

This instrument was filed for record this ______ day
of ______ 19
at ______ o'clock ______ M.,
and duly recorded in Book No. ______
______ at page ______

Register of Deeds

GPO 841-734

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Washington, D. C. 20242

Memorandum | BIAM Release 33-7

To: All Manual Holders | FEB 6 1970

From: Commissioner of Indian Affairs

Subject: Supplement 2 of 33 BIAM Reports and Forms Catalog

This release transmits an updated inventory of Bureau-wide reports and forms in catalog form.

The catalog includes, within the reports section, a listing of computer reports received from Indian Affairs Data Center. Computer produced reports are identified by a "C" following the report serial number. An attempt has been made to relate the computer reports with the Central Office activity involved.

Prior to this catalog, the last inventory of BIA forms was made on April 15, 1964, and the last listing of BIA reports on February 10, 1966. Because of the time lapse between inventories, we anticipate that some reports or forms now in use may have been inadvertently excluded and some which are obsolete included. Any corrections needed in either listing should be reported promptly to the Management Research Staff so the change can be made before the next publication of the catalog.

Acting ASSOCIATE Commissioner

Filing instructions for material transmitted:

(a) Remove superseded material:
Not applicable - The previous reports and forms listings were superseded by BIAM Release 33-2, dated March 11, 1969.

(b) Insert new material transmitted:
It is suggested that the catalog be maintained within a three-ring binder. The catalog is to be filed separately from the basic manual.

(c) Pen-and-ink changes:
Not applicable

LEASE FORMS USED BY BIA - REAL PROPERTY MANAGEMENT

Form Number as changed by Wash. Office	Old Form Number	Title
5-5441	5-180	Lease (used for Agricultural leases)
5-5445	5-181	Lease (used for surface leases other than agricultu
5-5461	5-1495	Residential Lease (used when the lessee is a member of the tribe)
5-5433	5-154j	Sand, Gravel, Pumice, Building Stone Permit
5-5434	5-154k	Sand, Gravel, Pumice, Building Stone Permit (Short-Term Form)
5-5440	5-159	Mining Lease Indian Lands (for minerals other than Oil and Gas)
5-5439	5-5157	Oil and Gas Mining Lease -Tribal Indian Lands
5-5432	5-154h	Oil and Gas Mining Lease -Allotted Indian Lands
5-5437	5-155b	Mineral Prospecting Permit (Exclusive with Option)
5-5436	5-155	Mineral Prospecting Permit (Nonexclsive and NonOptional)

SYNOPSES OF RELEVANT GENERAL STATUTES

25 USC 177-No purchase, grant, lease or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution..

25 USC 349-Provides for the issuance of patents in fee to allottees upon the expiration of the applicable trust period (except in former Indian Territory) or the Secretary upon his own discretion is authorized "...whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause or to be issued a patent in fee simple..."

25 USC 372-Provides authority for the Secretary to administer Indian estates and related matters during the trust period.

25 USC 378-Provides authority for the partition of inherited allotments among heirs where "...the Secretary of the Interior shall find that any inherited trust allotment or allotments are capable of partition to the advantage of the heirs,..."

25 USC 379-Provides Secretarial authority for the sale of allotted lands by the heirs of any deceased allottee subject to certain protections for minor heirs etc.

25 USC 404-Provides Secretarial authority (except in Oklahoma,Minnesota, and South Dakota) for the sale of all or a part of an allotment by the allottee or one holding any inherited interest therein on the petition of the beneficial owner(s) under such terms and conditions as the Secretary may prescribe.

25 USC 405-Provides authority for the sale of the interests in trust land held by noncompetent Indians, for their benefit, subject to such rules as the Secretary may prescribe.

25 USC 409-Provides for the sale of allotted lands within a reclamation project with the consideration being retained for payment of construction charges that may be assessed against the unsold portion and operation and maintenance charges during the trust period with the remainder going to the landowner.

25 USC 409a-Permits "... in the discretion and with the approval of the Secretary of the Interior" the reinvestment from the receipts of the sale of restricted nontaxable lands as the result of condemnation etc to be reinvested in other lands subject to the same terms and conditions.

25 USC 410-Moneys from lease or sale of trust lands not liable for certain debts.

25 USC 412a-Exempts Indian homesteads from taxation and restrictions against alienation or encumbrance except with the approval of the Secretary of the Interior.(Limitations as to land quantities or lot values that may be exempted)

25USC 450h(a)(3)-Provides grant authority utilizing Snyder Act appropriations to acquire certain lands (land within reservation boundaries or which adjoin trust lands on at least two sides) for certain broadly stated purposes i.e. the strengthening or improvement of tribal government etc.

25 USC 451-Authorizes the Secretary of the Interior to accept donations of funds or other property in furtherence of any program authorized by other provisions of law.

25 USC 464-The principal Indian Reorganization Act provision which severely limits the sale,devise,gift,exchange or other transfer of Indian lands or shares in the assets of Indian tribes or corporations.

25 USC 465-Provides discretionary authority for the Secretary of the Interior to acquire through purchase, relinquishment, gift, exchange, or assignment any interest in lands, water rights or surface rights to lands, within or without existing reservations, including trust or other restricted allotments, whether the allottee be living or dead for the purpose of providing lands for Indians.

25 USC 483-Authorizes the Secretary in his discretion and upon application of the Indian owners, to issue patents in fee, to remove restrictions against alienation, and to approve conveyances, with respect to lands or interests in lands held by individual Indians under the provisions of the Indian Reorganization Act.

25 USC 483a-Authorizes individual Indian owners of trust lands or lands subject to restrictions against alienation to execute a mortgage or deed of trust against such land-subject to the approval of the Secretary of the Interior.

25USC 488-Authorizes Farmers Home Administration loans to tribes and tribal corporations under certain conditions to acquire land within Indian reservations or Alaska communities. Lands may be taken in trust(25 USC 489). Tribes may waiver sovereign immunity in conjunction with such loans (25 USC 490) and are subject to the applicable state law regarding foreclosure and sale (25 USC 491) if the property is mortgaged under the authority of 25 USC 490.

25 USC 501-Authorizes 25 USC 465 type land acquisitions in Oklahoma. Permits imposition of gross-production by State on oil and gas produced from the lands acquired.

25 USC 502-Provides preferential right to the Secretary of the Interior to purchase "...any restricted Indian land or interests in land, other than sales or leases of oil, gas or other minerals therein...in Oklahoma at his discretion.

25 USC 1466-Provides for the taking in trust of certain lands (within a reservation or approved tribal land consolidation area or where prior trust interests existed) purchased by tribes or indididuals with revolving loan funds.

25 USC 1495-Provides title conveyance details for loans guaranteed or insured pursuant to the Indian Financing Act of 1974.

25 USC 2201 et seq-Provides for the consolidation of fractional interests in Indian land.

AUTHORIZED

BIA

REPORTS AND FORMS

CATALOG

Supplement 2 to 33 BIAM
(Reference 33 BIAM 3)

Introduction

A. Purpose

The purpose of this catalog is to provide the Bureau with an up-to-date listing of all authorized Bureau-wide reports and forms. Reports and forms which are not listed in this catalog have not been approved in accordance with the reports and forms management system prescribed by 33 BIAM 3.

B. Organization of Handbook

The catalog is separated into two sections:

1. Section I - Authorized BIA Forms
2. Section II - Authorized BIA Reports

The reports and forms are arranged in groups by manual classification number and consecutively within the group by serial number.

A listing of computer reports, received from IADC, is included within Section II of this catalog.

Each computer report is identified by the assignment of a manual classification number, a hyphen, a serial number and a letter (C) in parentheses.

C. Procedures for Additions or Changes

33 BIAM 3 requires that new or revised reports or forms be submitted to Management Research with a completed form 5-3301 for clearance. Management Research will, if appropriate, indicate clearance by assignment of a form or report number and signature in the clearance block of form 5-3301. Following clearance by Management Research, the form 5-3301 will be forwarded to the Director of Management Services for approval or disapproval.

Reports or forms that are approved after the last issue of this catalog are to be considered as authorized BIA reports or forms and will automatically be included in the next publication of the catalog.

When a report or form becomes obsolete, the responsible office will notify Management Research by either submitting a form 5-3301 (only completion of item 14 is necessary) or a memorandum identifying the obsolete report or form by title, number, and date.

Section I

Authorized BIA Forms

A change has been made in our forms numbering system so that we can associate forms, reports, and directives with the initiating office. The new form numbers consist of the number 5, a hyphen, the manual classification number, and serial number. (Example: The first form approved and related to 33 BIAM would be 5-3301.) The numbering system is described in full in 33 BIAM 3.4A. This is in agreement with recommendations presented in the January 1969, National Archives Report on BIA Records Management Programs.

In preparing the catalog, old form numbers have been shown, when identifiable, adjacent to the new number. Conversion to the new number should be accomplished as rapidly as possible and in no case should conversion be delayed beyond the next printing of forms stock. Existing stocks may be used until exhausted.

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Handouts - Session Three

PART 152—ISSUANCE OF PATENTS IN FEE, CERTIFICATES OF COMPETENCY, REMOVAL OF RESTRICTIONS, AND SALE OF CERTAIN INDIAN LANDS

Sec.
152.1 Definitions.
152.2 Withholding action on application.

ISSUING PATENTS IN FEE, CERTIFICATES OF COMPETENCY OR ORDERS REMOVING RESTRICTIONS

152.3 Information regarding status of applications for removal of Federal supervision over Indian lands.
152.4 Application for patent in fee.
152.5 Issuance of patent in fee.
152.6 Issuance of patents in fee to non-Indians and Indians with whom a special relationship does not exist.
152.7 Application for certificate of competency.
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152.9 Certificates of competency to certain Osage adults.
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152.12 Removal of restrictions, Five Civilized Tribes, after application under authority other than section 2(a) of the Act of August 11, 1955.
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152.14 Removal of restrictions, Five Civilized Tribes, without application.
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SALES, EXCHANGES AND CONVEYANCES OF TRUST OR RESTRICTED LANDS

152.17 Sales, exchanges, and conveyances by, or with the consent of the individual Indian owner.
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152.21 Sale or exchange of tribal land.
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Sec.
152.24 Appraisal.
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PARTITIONS IN KIND OF INHERITED ALLOTMENTS

152.33 Partition.

MORTGAGES AND DEEDS OF TRUST TO SECURE LOANS TO INDIANS

152.34 Approval of mortgage and deeds of trust.
152.35 Deferred payment sales.

AUTHORITY: R.S. 161; 5 U.S.C. 301. Interpret or apply sec. 7, 32 Stat. 275, 34 Stat. 1018, sec. 1, 35 Stat. 444, sec. 1 and 2, 36 Stat. 855, as amended, 856, as amended, sec. 17, 39 Stat. 127, 40 Stat. 579, 62 Stat. 236, sec. 2, 40 Stat. 606, 68 Stat. 358, 69 Stat. 666; 25 U.S.C. 378, 379, 405, 404, 372, 373, 483, 355, unless otherwise noted.

SOURCE: 38 FR 10080, Apr. 24, 1973, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

CROSS REFERENCES: For further regulations pertaining to the sale of irrigable lands, see Parts 160, 159 and § 134.4 of this chapter. For Indian money regulations, see Parts 115, 111, 116, and 112 of this chapter. For regulations pertaining to the determination of heirs and approval of wills, see Part 15 and §§ 11.30 through 11.32C of this chapter.

§ 152.1 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) "Agency" means an Indian agency or other field unit of the Bureau of Indian Affairs having trust or restricted Indian land under its immediate jurisdiction.

(c) "Restricted land" means land or any interest therein, the title to which is held by an individual Indian, subject to Federal restrictions against alienation or encumbrance.

(d) "Trust land" means land or any interest therein held in trust by the United States for an individual Indian.

(e) "Competent" means the possession of sufficient ability, knowledge, experience, and judgment to enable an individual to manage his business affairs, including the administration, use, investment, and disposition of any property turned over to him and the income or proceeds therefrom, with such reasonable degree of prudence and wisdom as will be apt to prevent him from losing such property or the benefits thereof. (Act of August 11, 1955 (69 Stat. 666).)

(f) "Tribe" means a tribe, band, nation, community, group, or pueblo of Indians.

§ 152.2 Withholding action on application.

Action on any application, which if approved would remove Indian land from restricted or trust status, may be withheld, if the Secretary determines that such removal would adversely affect the best interest of other Indians, or the tribes, until the other Indians or the tribes so affected have had a reasonable opportunity to acquire the land from the applicant. If action on the application is to be withheld, the applicant shall be advised that he has the right to appeal the withholding action pursuant to the provisions of Part 2 of this chapter.

ISSUING PATENTS IN FEE, CERTIFICATES OF COMPETENCY OR ORDERS REMOVING RESTRICTIONS

§ 152.3 Information regarding status of applications for removal of Federal supervision over Indian lands.

The status of applications by Indians for patents in fee, certificates of competency, or orders removing restrictions shall be disclosed to employees of the Department of the Interior whose duties require that such information be disclosed to them; to the applicant or his attorney, upon request; and to Members of Congress who inquire on behalf of the applicant. Such information will be available to all other persons, upon request, 15 days after the fee patent has been issued by the Bureau of Land Management, or 15 days after issuance of certificate of competency or order removing restrictions, or after the application has been rejected and the applicant notified.

Where the termination of the trust or restricted status of the land covered by the application would adversely affect the protection and use of Indian land remaining in trust or restricted status, the owners of the land that would be so affected may be informed that the application has been filed.

§ 152.4 Application for patent in fee.

Any Indian 21 years of age or over may apply for a patent in fee for his trust land. A written application shall be made in the form approved by the Secretary and shall be completed and filed with the agency having immediate jurisdiction over the land.

§ 152.5 Issuance of patent in fee.

(a) An application may be approved and fee patent issued if the Secretary, in his discretion, determines that the applicant is competent. When the patent in fee is delivered, an inventory of the estate covered thereby shall be given to the patentee. (Acts of Feb. 8, 1887 (24 Stat. 388), as amended (25 U.S.C. 349); June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 483), and other authorizing acts.)

(b) If an application is denied, the applicant shall be notified in writing, given the reasons therefor and advised of his right to appeal pursuant to the provisions of Part 2 of this chapter.

(c) White Earth Reservation: The Secretary will, pursuant to the Act of March 1, 1907 (34 Stat. 1015), issue a patent in fee to any adult mixed-blood Indian owning land within the White Earth Reservation in the State of Minnesota upon application from such Indian, and without consideration as to whether the applicant is competent.

(d) Fort Peck Reservation: Pursuant to the Act of June 30, 1954 (68 Stat. 358), oil and gas underlying certain allotments in the Fort Peck Reservation were granted to certain Indians to be held in trust for such Indians and provisions was made for issuance of patents in fee for such oil and gas or patents in fee for land in certain circumstances.

(1) Where an Indian or Indians were the grantees of the entire interest in the oil and gas underlying a parcel of land, and such Indian or Indians had before June 30, 1954, been issued a patent or patents in fee for any land within the Fort Peck Reservation, the title to the oil and gas was conveyed by the act in fee simple status.

(2) Where the entire interest in the oil and gas granted by the act is after June 30, 1954, held in trust for Indians to whom a fee patent has been issued at any time, for any land within the Fort Peck Reservation, or who have been or are determined by the Secretary to be competent, the Secretary will convey, by patent, without application, therefor, unrestricted fee simple title to the oil and gas.

(3) Where the Secretary determines that the entire interest in a tract of land on the Fort Peck Reservation is owned by Indians who were grantees of oil and gas under the act and he determines that such Indians are competent, he will issue fee patents to them covering all interests in the land without application.

§ 152.6 Issuance of patents in fee to non-Indians and Indians with whom a special relationship does not exist.

Whenever the Secretary determines that trust land, or any interest therein, has been acquired through inheritance or devise by a non-Indian, or by a person of Indian descent to whom the United States owes no trust responsibility, the Secretary may issue a patent in fee for the land or interest therein to such person without application.

§ 152.7 Application for certificate of competency.

Any Indian 21 years old or over, except certain adult members of the Osage Tribe as provided in § 152.9, who holds land or an interest therein under a restricted fee patent may apply for a certificate of competency. The written application shall be made in the form approved by the Secretary and filed with the agency having immediate jurisdiction over the land.

§ 152.8 Issuance of certificate of competency.

(a) An application may be approved and a certificate of competency issued if the Secretary, in his discretion, determines that the applicant is competent. The delivery of the certificate shall have the effect of removing the restrictions from the land described therein. (Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372).)

(b) If the application is denied, the applicant shall be notified in writing, given the reasons therefor and advised of his right to appeal pursuant to the provisions of Part 2 of this chapter.

§ 152.9 Certificates of competency to certain Osage adults.

Applications for certificates of competency by adult members of the Osage Tribe of one-half or more Indian blood shall be in the form approved by the Secretary. Upon the finding by the Secretary that an applicant is competent, a certificate of competency may be issued removing restrictions against alienation of all restricted property and terminating the trust on all restricted property, except Osage headright interests, of the applicant.

CROSS-REFERENCES: For regulations pertaining to the issuance of certificates of competency to adult Osage Indians of less than one-half Indian blood, see Part 154 of this chapter.

§ 152.10 Application for orders removing restrictions, except Five Civilized Tribes.

Any Indian not under legal disability under the laws of the State where he resides or where the land is located, or the court-appointed guardian or conservator of any Indian, may apply for an order removing restrictions from his restricted land or the restricted land of his ward. The application shall be in writing setting forth reasons for removal of restrictions and filed with the agency having immediate jurisdiction over the lands.

§ 152.11 Issuance of orders removing restrictions, except Five Civilized Tribes.

(a) An application for an order removing restrictions may be approved and such order issued by the Secretary, in his discretion, if he determines that the applicant is competent or that removal of restrictions is in the best interests of the Indian owner. The effect of the order will be to remove the restrictions from the land described therein.

(b) If the application is denied, the applicant will be notified in writing, given the reasons therefor and advised of his right to appeal pursuant to the provisions of Part 2 of this chapter.

§ 152.12 Removal of restrictions, Five Civilized Tribes, after application under authority other than section 2(a) of the Act of August 11, 1955.

When an Indian of the Five Civilized Tribes makes application for removal of restrictions from his restricted lands under authority other than section 2(a) of the Act of August 11, 1955 (69 Stat. 666), such application may be for either unconditional removal of restrictions or conditional removal of restrictions, but shall not include lands or interest in lands acquired by inheritance or devise.

(a) If the application is for unconditional removal of restrictions and the Secretary, in his discretion, determines the applicant should have the unrestricted control of that land described in his application, the Secretary may issue an order removing restrictions therefrom.

(b) When the Secretary, in his discretion, finds that in the best interest of the applicant all or part of the land described in the application should be sold with conditions concerning terms of sale and disposal of the proceeds, the Secretary may issue a conditional order removing restrictions which shall be effective only and simultaneously with the execution of a deed by said applicant upon completion of an advertised sale or negotiated sale acceptable to the Secretary.

§ 152.13 Removal of restrictions, Five Civilized Tribes, after application under section 2(a) of the Act of August 11, 1955.

When an Indian of the Five Civilized Tribes makes application for removal of restrictions under authority of section 2(a) of the Act of August 11, 1955 (69 Stat. 666), the Secretary will determine the competency of the applicant.

(a) If the Secretary determines the applicant to be competent, he shall issue an order removing restrictions having the effect stated in § 152.16.

(b) If the Secretary rejects the application, his action is not subject to administrative appeal, notwithstanding the provisions concerning appeals in Part 2 of this chapter.

(c) If the Secretary rejects the application, or neither rejects nor approves the application within 90 days of the application date, the applicant may apply to the State district court in the county in which he resides for an order removing restrictions. If that State district court issues such order, it will have the effect stated in § 152.16.

§ 152.14 Removal of restrictions, Five Civilized Tribes, without application.

Section 2(b) of the Act of August 11, 1955 (69 Stat. 666), authorizes the Secretary to issue an order removing restrictions to an Indian of the Five Civilized Tribes without application therefor. When the Secretary determines an Indian to be competent, he shall notify the Indian in writing of his intent to issue an order removing restrictions 30 days after the date of the notice. This decision may be appealed under the provisions of Part 2 of this chapter within such 30 days. All administrative appeals under that part will postpone the issuance of the order. When the decision is not appealed within 30 days after the date of notice, or when any dismissal of an appeal is not appealed within the prescribed time limit, or when the final appeal is dismissed, an order removing restrictions will be issued.

§ 152.15 Judicial review of removal of restrictions, Five Civilized Tribes, without application.

When an order removing restrictions is issued, pursuant to § 152.14, a copy of such order will be delivered to the Indian, to any person acting in his behalf, and to the Board of County Commissioners for the county in which the Indian resides. At the time the order is delivered written notice will be given the parties that under the terms of the Act of August 11, 1955 (69 Stat. 666), the Indian or the Board of County Commissioners has, within 6 months of the date of notification, the right to appeal to the State district court for the district in which the Indian resides for an order setting aside the order removing restrictions. The timely initiation of proceedings in the State district court will stay the effective date of the order removing restrictions until such proceedings are concluded. If the State district court dismisses the appeal, the order removing restrictions will become effective 6 months after notification to the parties of such dismissal. The effect of the issuance of such order will be as prescribed in § 152.16.

§ 152.16 Effect of order removing restrictions, Five Civilized Tribes.

An order removing restrictions issued pursuant to the Act of August 11, 1955 (69 Stat. 666), on its effective date shall serve to remove all jurisdiction and supervision of the Bureau of Indian Affairs over money and property held by the United States in trust for the individual Indian or held subject to restrictions against alienation imposed by the United States. The Secretary shall cause to be turned over to the Indian full ownership and control of such money and property and issue in the case of land such title document as may be appropriate: *Provided*, That the Secretary may make such provisions as he deems necessary to insure payment of money loaned to any such Indian by the Federal Government or by an Indian tribe; *And provided further*, That the interest of any lessee or permittee in any lease, contract, or permit that is outstanding when an order removing restrictions becomes effective shall be preserved as provided in section 2(d) of the Act of August 11, 1955 (69 Stat. 666).

SALES, EXCHANGES AND CONVEYANCES OF TRUST OR RESTRICTED LANDS

§ 152.17 Sales, exchanges, and conveyances by, or with the consent of the individual Indian owner.

Pursuant to the Acts of May 27, 1902 (32 Stat. 275; 25 U.S.C. 379); May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357); March 1, 1907 (34 Stat. 1018; 25 U.S.C. 405); May 29, 1908 (35 Stat. 444; 25 U.S.C. 404); June 25, 1910 (36 Stat.

855; 25 U.S.C. 372), as amended May 25, 1926 (44 Stat. 629; 48 U.S.C. 355a-355d); June 18, 1934 (48 Stat. 984; 25 U.S.C. 464); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 483); and pursuant to other authorizing acts, trust or restricted lands acquired by allotment, devise, inheritance, purchase, exchange, or gift may be sold, exchanged, and conveyed by the Indian owner with the approval of the Secretary or by the Secretary with the consent of the Indian owner.

§ 152.18 Sale with the consent of natural guardian or person designated by the Secretary.

Pursuant to the Act of May 29, 1908 (35 Stat. 444; 25 U.S.C. 404), the Secretary may, with the consent of the natural guardian of a minor, sell trust or restricted land belonging to such minor; and the Secretary may, with the consent of a person designated by him, sell trust or restricted land belonging to Indians who are minor orphans without a natural guardian, and Indians who are non compos mentis or otherwise under legal disability. The authority contained in this act is not applicable to lands in Oklahoma, Minnesota, and South Dakota, nor to lands authorized to be sold by the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

§ 152.19 Sale by fiduciaries.

Guardians, conservators, or other fiduciaries appointed by State courts, or by tribal courts operating under approved constitutions or law and order codes, may, upon order of the court, convey with the approval of the Secretary or consent to the conveyance by the Secretary of trust or restricted land belonging to their Indian wards who are minors, non compos mentis or otherwise under legal disability. This section is subject to the exceptions contained in 25 U.S.C. 954(b).

§ 152.20 Sale by Secretary of certain land in multiple ownership.

Pursuant to the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372), if the Secretary decides that one or more of the heirs who have inherited trust land are incapable of managing their own affairs, he may sell any or all interests in that land. This authority is not applicable to lands authorized to be sold by the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

§ 152.21 Sale or exchange of tribal land.

Certain tribal land may be sold or exchanged pursuant to the Acts of February 14, 1920 (41 Stat. 415; 25 U.S.C. 294); June 18, 1934 (48 Stat. 984; 25 U.S.C. 464); August 10, 1939 (53 Stat. 1351; 25 U.S.C. 463(e)); July 1, 1948 (62 Stat. 1214); June 4, 1953 (67 Stat. 41; 25 U.S.C. 293(a)); July 28, 1955 (69 Stat. 392), as amended August 31, 1964 (78 Stat. 747; 25 U.S.C. 608-608c); June 18, 1956 (70 Stat. 290; 25 U.S.C. 403a-2); July 24, 1956 (70 Stat. 626); May 19, 1958 (72 Stat. 121; 25 U.S.C. 463, Note); September 2, 1958 (72 Stat. 1762); April 4, 1960 (74 Stat. 13); April 29, 1960 (74 Stat. 85); December 11, 1963 (77 Stat. 349); August 11, 1964 (78 Stat. 389), and pursuant to other authorizing acts. Except as otherwise provided by law, and as far as practicable, the regulations in this Part 152 shall be applicable to sale or exchanges of such tribal land.

§ 152.22 Secretarial approval necessary to convey individual-owned trust or restricted lands or land owned by a tribe.

(a) *Individual lands.* Trust or restricted lands, except inherited lands of the Five Civilized Tribes, or any interest therein, may not be conveyed without the approval of the Secretary. Moreover, inducing an Indian to execute an instrument purporting to convey any trust land or interest therein, or the offering of any such instrument for record, is prohibited and criminal penalties may be incurred. (See 25 U.S.C. 202 and 348.)

(b) *Tribal lands.* Lands held in trust by the United States for an Indian tribe, lands owned by a tribe with Federal restrictions against alienation and any other land owned by an Indian tribe may only be conveyed where specific statutory authority exists and then only with the approval of the Secretary unless the Act of Congress authorizing sale provides that approval is unnecessary. (See 25 U.S.C. 177.)

§ 152.23 Applications for sale, exchange or gift.

Applications for the sale, exchange or gift of trust or restricted land shall be filed in the form approved by the Secretary with the agency having immediate jurisdiction over the land. Applications may be approved if, after careful examination of the circumstances in each case, the transaction appears to be clearly justified in the light of the long-range best interest of the owner or owners or as under conditions set out in § 152.25(d).

§ 152.24 Appraisal.

Except as otherwise provided by the Secretary, an appraisal shall be made indicating the fair market value prior to making or approving a sale, exchange, or other transfer of title of trust or restricted land.

§ 152.25 Negotiated sales, gifts and exchanges of trust or restricted lands.

Those sales, exchanges, and gifts of trust or restricted lands specifically described in the following paragraphs (a), (b), (c), and (d) of this section may be negotiated; all other sales shall be by advertised sale, except as may be otherwise provided by the Secretary.

(a) *Consideration not less than the appraised fair market value.* Indian owners may, with the approval of the Secretary, negotiate a sale of and sell trust or restricted land for not less than the appraised fair market value: (1) When the sale is to the United States, States, or political subdivisions thereof, or such other sale as may be for a public purpose; (2) when the sale is to the tribe or another Indian; or (3) when the Secretary determines it is impractical to advertise.

(b) *Exchange at appraised fair market value.* With the approval of the Secretary, Indian owners may exchange trust or restricted land, or a combination of such land and other things of value, for other lands or combinations of land and other things of value. The value of the consideration received by the Indian in the exchange must be at least substantially equal to the appraised fair market value of the consideration given by him.

(c) *Sale to coowners.* With the approval of the Secretary, Indian owners may negotiate a sale of and sell trust or restricted land to a coowner of that land. The consideration may be less than the appraised fair market value, if in the opinion of the Secretary there is a special relationship between the coowners or special circumstances exist.

(d) *Gifts and conveyances for less than the appraised fair market value.* With the approval of the Secretary, Indian owners may convey trust or restricted land, for less than the appraised fair market value or for no consideration when the prospective grantee is the owner's spouse, brother, sister, lineal ancestor of Indian blood or lineal descendant, or when some other special relationship exists between the grantor and grantee or special circumstances exist that in the opinion of the Secretary warrant the approval of the conveyance.

§ 152.26 Advertisement.

(a) Upon approval of an application for an advertised sale, notice of the sale will be published not less than 30 days prior to the date fixed for the sale unless for good cause a shorter period is authorized by the Secretary.

(b) The notice of sale will include (1) terms, conditions, place, date, hour, and methods of sale, including explanation of auction procedure as set out in § 152.27(b)(2) if applicable; (2) where and how bids shall be submitted; (3) a statement warning all bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders or potential bidders; and (4) description of tracts, all reservations to which title will be subject and any restrictions and encumbrances of record with the Bureau of Indian Affairs and any other information that may improve sale prospects.

§ 152.27 Procedure of sale.

Advertised sales shall be by sealed bids except as otherwise provided herein.

(a) (1) Bids, conforming to the requirements set out in the advertisement of sale, along with a certified check, cashier's check, money order, or U.S. Treasury check, payable to the Bureau of Indian Affairs, for not less than 10 percent of the amount of the bid, must be enclosed in a sealed envelope marked as prescribed in the notice of sale. A cash deposit may be submitted in lieu of the above-specified negotiable instruments at the bidder's risk. Tribes submitting bids pursuant to this paragraph may guarantee the required 10 percent deposit by an appropriate resolution; (2) the sealed envelopes containing the bids will be publicly opened at the time fixed for sale. The bids will be announced and will be appropriately recorded.

(b) The policy of the Secretary recognizes that in many instances a tribe or a member thereof has a valid interest in acquiring trust or restricted lands offered for sale.

(1) With the consent of the owner and when the notice of sale so states, the tribe or members of such tribe shall have the right to meet the high bid.

(2) Provided the tribe is not the high bidder and when one or more acceptable sealed bids are received and when so stated in the notice of sale, an oral auction may be held following the bid opening. Bidding in the auction will be limited to the tribe, and to those who submitted sealed bids at 75 percent or more of the appraised value of the land being auctioned. At the conclusion of the auction the highest bidder must increase his deposit to not less than 10 percent of his auction bid.

§ 152.28 Action at close of bidding.

(a) The officer in charge of the sale shall publicly announce the apparent highest acceptable bid. The deposits submitted by the unsuccessful bidders shall be returned immediately. The deposit submitted by the apparent successful bidder shall be held in a special account.

(b) If the highest bid received at an advertised sale is less than the appraised fair market value of the land, the Secretary with the consent of the owner may accept that bid if the amount bid approximates said appraised fair market value and in the Secretary's judgment is the highest price that may be realized in the circumstances.

(c) The Secretary shall award the bid and notify the apparent successful bidder that the remainder of the purchase price must be submitted within 30 days.

(1) Upon a showing of cause the Secretary may, in his discretion, extend the time of payment of the balance due.

(2) If the remainder of the purchase price is not paid within the time allowed, the bid will be rejected and the apparent successful bidder's 10 percent deposit will be forfeited to the landowner's use.

(d) The issuance of the patent or delivery of a deed to the purchaser will not be authorized until the balance of the purchase price has been paid, except that the fee patent may be ordered in cases where the purchaser is obtaining a loan from an agency of the Federal Government and such agency has given the Secretary a commitment that the balance of the purchase price will be paid when the fee patent is issued.

§ 152.29 Rejection of bids; disapproval of sale.

The Secretary reserves the right to reject any and all bids before the award, after the award, or at any time prior to the issuance of a patent or delivery of a deed, when he shall have determined such rejection to be in the best interests of the Indian owner.

§ 152.30 Bidding by employees.

Except as authorized by the provisions of Part 140 of this chapter, no person employed in Indian Affairs shall directly or indirectly bid, make, or prepare any bid, or assist any bidder in preparing his bid. Sales between Indians, either of whom is an employee of the U.S. Government, are governed by the provisions of Part 140 of this chapter (see 25 U.S.C. 68 and 441).

§ 152.31 Cost of conveyance; payment.

Pursuant to the Act of February 14, 1920 (41 Stat. 415), as amended by the Act of March 1, 1933 (47 Stat. 1417; 25 U.S.C. 413), the Secretary may in his discretion collect from a purchaser reasonable fees for work performed or expense incurred in the transaction. The amount so collected shall be deposited to the credit of the United States as general fund receipts, except as stated in paragraph (b) of this section.

(a) (1) The amount of the fee shall be $22.50 for each transaction.

(2) The fee may be reduced to a lesser amount or may be waived, if the Secretary determines circumstances justify such action.

(b) (1) If any or all of the costs of the work performed or expenses incurred are paid with tribal funds, an alternate schedule of fees may be established, subject to approval of the Secretary, and that part of such fees deemed appropriate may be credited to the tribe.

(2) When the purchaser is the tribe which bears all or any part of such costs, the collection of the proportionate share from the tribe may be waived.

§ 152.32 Irrigation fee; payment.

Collection of all construction costs against any Indian-owned lands within Indian irrigation projects is deferred as long as Indian title has not been extinguished. (Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 386a).) This statute is interpreted to apply only where such land is owned by Indians either in trust or restricted status.

(a) When any person whether Indian or non-Indian acquires Indian lands in a fee simple status that are part of an Indian irrigation project he must enter into an agreement, (1) to pay the pro rata share of the construction of the project chargeable to the land, (2) to pay all construction costs that accrue in the future, and (3) to pay all future charges assessable to the land which are based on the annual cost of operation and maintenance of the irrigation system.

(b) Any operation and maintenance charges that are delinquent when Indian land is sold will be deducted from the proceeds of sale unless other acceptable arrangements are made to provide for their payment prior to the approval of the sale.

(c) A lien clause covering all unpaid irrigation construction costs, past and future, will be inserted in the patent or other instrument of conveyance issued to all purchasers of restricted or trust lands that are under an Indian irrigation project.

CROSS-REFERENCE: See Part 159 and Part 160 and cross-references thereunder in this chapter for further regulations regarding sale of irrigable lands.

PARTITIONS IN KIND OF INHERITED ALLOTMENTS

§ 152.33 Partition.

(a) *Partition without application.* If the Secretary of the Interior shall find that any inherited trust allotment or allotments (as distinguished from lands held in a restricted fee status or authorized to be sold under the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483)), are capable of partition in kind to the advantage of the heirs, he may cause such lands to be partitioned among them, regardless of their competency, patents in fee to be issued to the competent heirs for their shares and trust patents to be issued to the incompetent heirs for the lands respectively or jointly set apart to them, the trust period to terminate in accordance with the terms of the original patent or order of extension of the trust period set out in said patent. (Act of May 18, 1916 (39 Stat. 127; 25 U.S.C. 378).) The authority contained in the Act of May 18, 1916, is not applicable to lands authorized to be sold by the Act of May 14, 1948, nor to land held in restricted fee status.

(b) *Application for partition.* Heirs of a deceased allottee may make written application, in the form approved by the Secretary, for partition of their trust or restricted land. If the Secretary finds the trust lands susceptible of partition, he may issue new patents or deeds to the heirs for the portions set aside to them. If the allotment is held under a restricted fee title (as distinguished from a trust title), partition may be accomplished by the heirs executing deeds approved by the Secretary, to the other heirs for their respective portions.

MORTGAGES AND DEEDS OF TRUST TO SECURE LOANS TO INDIANS

§ 152.34 Approval of mortgages and deeds of trust.

Any individual Indian owner of trust or restricted lands, may with the approval of the Secretary execute a mortgage or deed of trust to his land. Prior to approval of such mortgage or deed of trust, the Secretary shall secure appraisal information as he deems advisable. Such lands shall be subject to foreclosure or sale pursuant to the terms of the mortgage or deed of trust in accordance with the laws of the State in which the lands are located. For the purpose of foreclosure or sale proceedings under this section, the Indian owners shall be regarded as vested with unrestricted fee simple title to the lands (Act of March 29, 1956.

(70 Stat. 62; 25 U.S.C. 483a)

§ 152.35 Deferred payment sales.

When the Indian owner and purchaser desire, a sale may be made or approved on the deferred payment plan. The terms of the sale will be incorporated in a memorandum of sale which shall constitute a contract for delivery of title upon payment in full of the amount of the agreed consideration. The deed executed by the grantor or grantors will be held by the Superintendent and will be delivered only upon full compliance with the terms of sale. If conveyance of title is to be made by fee patent, request therefor will be made only upon full compliance with the terms of the sale. The terms of the sale shall require that the purchaser pay not less than 10 percent of the purchase price in advance as required by the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372); terms for the payment of the remaining installments plus interest shall be those acceptable to the Secretary and the Indian owner. If the purchaser on any deferred payment plan makes default in the first or subsequent payments, all payments, including interest, previously made will be forfeited to the Indian owner.

PART 153—DETERMINATION OF COMPETENCY: CROW INDIANS

Sec.
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153.2 Application and examination.
153.3 Application form.
153.4 Factors determining competency.
153.5 Children of competent Indians.
153.6 Appeals.

AUTHORITY: Sec. 12, 41 Stat. 755, 46 Stat. 1495, as amended.

SOURCE: 22 FR 10563, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 153.1 Purpose of regulations.

The regulations in this part govern the procedures in determining the competency of Crow Indians under Public Law 303, 81st Congress, approved September 8, 1949.

§ 153.2 Application and examination.

The Commissioner of Indian Affairs or his duly authorized representative, upon the application of any unenrolled adult member of the Crow Tribe, shall classify him by placing his name to the competent or incompetent rolls established pursuant to the act of June 4, 1920 (41 Stat. 751), and upon application shall determine whether those persons whose names now or hereafter appear on the incompetent roll shall be reclassified as competent and their names placed on the competent roll.

§ 153.3 Application form.

The application form shall include, among other things: (a) The name of the applicant; (b) his age, residence, degree of Indian blood, and education; (c) his experience in farming, cattle raising, business, or other occupation (including home-making); (d) his present occupation, if any; (e) a statement concerning the applicant's financial status, including his average earned and unearned income for the last two years from restricted leases and from other sources, and his outstanding indebtedness to the United States, to the tribe, or to others; (f) a description of his property and its value, including his allotted and inherited lands; and (g) the name of the ap-

Handouts - Session Four

PART 151—LAND ACQUISITIONS

HANDOUT IV A

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151.10 Factors to be considered in evaluating requests.
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151.12 Title examination.
151.13 Formalization of acceptance.

Authority: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 stat. 1471, as amended; 48 stat. 985, as amended; 49 Stat. 1967, as amended; 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended; 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d-10, 1466, and 1495, and other authorizing acts.

Source: 45 FR 62036, Sept. 18, 1980, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

Cross-Reference: For regulations pertaining to: The inheritance of interests in trust or restricted land, see Parts 15, 16, and 17 of this title and 43 CFR Part 4; the purchase of lands under the BIA Loan Guaranty, Insurance and Interest Subsidy program, see Part 103 of this title; the exchange and partition of trust or restricted lands, see Part 152 of this title; land acquisitions authorized by the Indian Self-Determination and Education Assistance Act, see Parts 272 and 276 of this title; the acquisition of allotments on the public domain or in national forests, see 43 CFR Part 2530; the acquisition of Native allotments and Native townsite lots in Alaska, see 43 CFR 2561 and 2564; the acquisition of lands by Indians with funds borrowed from the Farmers Home Administration, see 7 CFR 1823 Subpart N, the acquisition of land by purchase or exchange for members of the Osage Tribe not having certificates of competency, see §§ 117.8 and 158.54 of this title.

§ 151.1 Purpose and scope.

These regulations set forth the authorities, policy, and procedures governing the acquisition of land by the United States in trust status for individual Indians and tribes. Acquisition of land by individual Indians and tribes in fee simple status is not covered by these regulations even though such land may, by operation of law, be held in restricted status following acquisition. Acquisition of land in trust status by inheritance or escheat is not covered by these regulations. These regulations do not cover the acquisition of land in trust status in the State of Alaska, except acquisitions for the Metlakatla Indian Community of the Annette Island Reserve or it members.

§ 151.2 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) "Tribe" means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians, including the Metlakatla Indian Community of the Annette Island Reserve, which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs. For purposes of acquisitions made under the authority of 25 U.S.C. 488 and 489, or other statutory authority which specifically authorizes trust acquisitions for such corporations, "Tribe" also means a corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477) or section 3 of the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 503).

(c) "Individual Indian" means:

(1) Any person who is an enrolled member of a tribe;

(2) Any person who is a descendent of such a member and said descendant was, on June 1, 1934, physically residing on a federally recognized Indian reservation;

(3) Any other person possessing a total of one-half or more degree Indian blood of a tribe;

(4) For purposes of acquisitions outside of the State of Alaska, "Individual Indian" also means a person who meets the qualifications of paragraph (c) (1), (2), or (3) of this section where "Tribe" includes any Alaska Native Village or Alaska Native Group which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs.

(d) "Trust land" or "land in trust status" means land the title to which is held in trust by the United States for an individual Indian or a tribe.

(e) "Restricted land" or "land in restricted status" means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to Federal law or because of a Federal law directly imposing such limitations.

(f) Unless another definition is required by the act of Congress authorizing a particular trust acquisition, "Indian reservation" means that area of land over which the tribe is recognized by the United States as having governmental jurisdiction, except that, in the State of Oklahoma or where there has been a final judicial determination that a reservation has been disestablished or diminished, "Indian reservation" means that area of land constituting the former reservation of the tribe as defined by the Secretary.

(g) "Land" means real property or any interest therein.

(h) "Tribal consolidation area" means a specific area of land with respect to which the tribe has prepared, and the Secretary has approved, a plan for the acquisition of land in trust status for the tribe.

§ 151.3 Land acquisition policy.

Land not held in trust or restricted status may only be acquired for an individual Indian or a tribe in trust status when such acquisition is authorized by an act of Congress. No acquisition of land in trust status, including a transfer of land already held in trust or restricted status, shall be valid unless the acquisition is approved by the Secretary.

(a) Subject to the provisions contained in the acts of Congress which authorize land acquisitions, land may be acquired for a tribe in trust status (1) when the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or, (2) when the tribe already owns an interest in the land or, (3) when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

(b) Subject to the provisions contained in the acts of Congress which authorize land acquisitions or holding land in trust or restricted status, land may be acquired for an individual Indian in trust status (1) when the land is located within the exterior boundaries of an Indian reservation, or adjacent thereto; or, (2) when the land is already in trust or restricted status.

§ 151.4 Acquisitions in trust of lands owned in fee by an Indian.

Unrestricted land owned by an individual Indian or a tribe may be conveyed into trust status, including a conveyance to trust for the owner, subject to the provisions of this part.

§ 151.5 Trust acquisitions in Oklahoma under Section 5 of the I.R.A.

In addition to acquisitions for tribes which did not reject the provisions of the Indian Reorganization Act and their members, land may be acquired in trust status for an individual Indian or a tribe in the State of Oklahoma under Section 5 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 465), if such acquisition comes within the terms of this part. This authority is in addition to all other statutory authority for such an acquisition.

§ 151.6 Exchanges.

An individual Indian or tribe may acquire land in trust status by exchange if the acquisition comes within the terms of this part. The disposal aspects of an exchange are governed by Part 152 of this title.

§ 151.7 Acquisition of fractional interests.

Acquisition of a fractional land interest by an individual Indian or a tribe in trust status can be approved by the Secretary only if:

(a) The buyer already owns a fractional interest in the same parcel of land; or

(b) The interest being acquired by the buyer is in fee status; or

(c) The buyer offers to purchase the remaining undivided trust or restricted interests in the parcel at not less than their fair market value; or

(d) There is a specific law which grants to the particular buyer the right to purchase an undivided interest or interests in trust or restricted land without offering to purchase all of such interests; or

(e) The owner of a majority of the remaining trust or restricted interests in the parcel consent in writing to the acquisition by the buyer.

§ 151.8 Tribal consent for nonmember acquisitions.

An individual Indian or tribe may acquire land in trust status on a reservation other than its own only when the governing body of the tribe having jurisdiction over such reservation consents in writing to the acquisition; provided, that such consent shall not be required if the individual Indian or the tribe already owns an undivided trust or restricted interest in the parcel of land to be acquired.

§ 151.9 Requests for approval of acquisitions.

An individual Indian or tribe desiring to acquire land in trust status shall file a written request for approval of such acquisition with the Secretary. The request need not be in any special form but shall set out the identity of the parties, a description of the land to be acquired, and other information which would show that the acquisition comes within the terms of this part.

§ 151.10 Factors to be considered in evaluating requests.

In evaluating requests for the acquisition of land in trust status, the Secretary shall consider the following factors:

(a) The existence of statutory authority for the acquisition and any limitations contained in such authority;

(b) The need of the individual Indian or the tribe for additional land;

(c) The purposes for which the land will be used;

(d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;

(e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;

(f) Jurisdictional problems and potential conflicts of land use which may arise; and

(g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

§ 151.11 Action on requests.

The Secretary shall review all requests and shall promptly notify the applicant in writing of his decision. The Secretary may request any additional information or justification he considers necessary to enable him to reach a decision. If the Secretary determines that the request should be denied, he shall advise the applicant of that fact and the reasons therefor in writing and notify him of the right to appeal pursuant to Part 2 of this title.

§ 151.12 Title examination.

If the Secretary determines that he will approve a request for the acquisition of land from unrestricted fee status to trust status, he shall acquire, or require the applicant to furnish, title evidence meeting the *Standards For The Preparation of Title Evidence In Land Acquisitions by the United States*, issued by the U.S. Department of Justice. After having the title evidence examined, the Secretary shall notify the applicant of any liens, encumbrances, or infirmities which may exist. The Secretary may require the elimination of any such liens, encumbrances, or infirmities prior to taking final approval action on the acquisition and he shall require elimination prior to such approval if the liens, encumbrances, or infirmities make title to the land unmarketable.

§ 151.13 Formalization of acceptance.

Formal acceptance of land in trust status shall be accomplished by the issuance or approval of an instrument of conveyance by the Secretary as is appropriate in the circumstances.

PART 152—ISSUANCE OF PATENTS IN FEE, CERTIFICATES OF COMPETENCY, REMOVAL OF RESTRICTIONS, AND SALE OF CERTAIN INDIAN LANDS

Sec.
152.1 Definitions.
152.2 Withholding action on application.

ISSUING PATENTS IN FEE, CERTIFICATES OF COMPETENCY OR ORDERS REMOVING RESTRICTIONS

152.3 Information regarding status of applications for removal of Federal supervision over Indian lands.
152.4 Application for patent in fee.
152.5 Issuance of patent in fee.
152.6 Issuance of patents in fee to non-Indians and Indians with whom a special relationship does not exist.
152.7 Application for certificate of competency.
152.8 Issuance of certificate of competency.
152.9 Certificates of competency to certain Osage adults.
152.10 Application for orders removing restrictions, except Five Civilized Tribes.
152.11 Issuance of orders removing restrictions, except Five Civilized Tribes.
152.12 Removal of restrictions, Five Civilized Tribes, after application under authority other than section 2(a) of the Act of August 11, 1955.
152.13 Removal of restrictions, Five Civilized Tribes, after application under section 2(a) of the Act of August 11, 1955.
152.14 Removal of restrictions, Five Civilized Tribes, without application.
152.15 Judicial review of removal of restrictions, Five Civilized Tribes, without application.
152.16 Effect of order removing restrictions, Five Civilized Tribes.

SALES, EXCHANGES AND CONVEYANCES OF TRUST OR RESTRICTED LANDS

152.17 Sales, exchanges, and conveyances by, or with the consent of the individual Indian owner.
152.18 Sale with the consent of natural guardian or person designated by the Secretary.
152.19 Sale by fiduciaries.
152.20 Sale by Secretary of certain land in multiple ownership.
152.21 Sale or exchange of tribal land.
152.22 Secretarial approval necessary to convey individual-owned trust or restricted lands or land owned by a tribe.
152.23 Applications for sale, exchange or gift.

HANDOUT IV B

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOV 3 1980

Memorandum

To:	**All Area Directors, Bureau of Indian Affairs**
From:	**The Secretary**
Subject:	**Implementation of Land Acquisition Regulations, 25 CFR §120a.**

Pending the drafting and approval of a BIAM Manual release for land acquisitions, the following general guidelines should be followed. If any questions arise regarding these guidelines or regulations, contact Wayne Nordwall in the Division of Real Estate Services at (202) 343-7738, Anita Vogt, Office of the Solicitor at (202) 343-8526, or Ray Jackson, Phoenix Area Office, at (602) 261-2310.

§120a.1 Self-explanatory

§120a.2 Self-explanatory

§120a.3(a)(1) Self-explanatory

(2) This clause covers instances such as those where the tribe owns a fractionated interest in an off-reservation allotment, owns the minerals located off-reservation and is attempting to purchase the surface interest, and other circumstances where the tribe owns an interest in an off-reservation trust asset and is attempting to consolidate that interest.

(3) This clause allows off-reservation fee lands to be considered for acquisition if the land is essential for tribal programs. In considering applications for off-reservation acquisitions, the factors listed in §120a.10 will be carefully balanced; in particular, the importance to the tribe of the parcel in question (including the possibility or impossibility of substitution of a closer parcel and whether or not declining to take the land in trust will materially affect the intended use of the land) will be weighed against the administrative burden on the Bureau that would result from the acquisition. §120a.10(g) In most cases, the balance can be expected to tip toward rejecting the application as distance from the reservation increases.

All applications for acquisitions that are not within or adjacent to a reservation must be forwarded, together with the complete record on the acquisition, to the Central Office for a decision by the Office of the Secretary. In addition to the information required by the other provisions of these regulations, the applicant *must* include in the record a justification explaining why the proposed acquisition is *necessary* to effectuate the purposes listed in this section. In essence, it must be shown that the proposed acquisition is essential to a tribal program and that the program will fail in the absence of the acquisition.

§120a.4 Self-explanatory

§120a.5 Self-explanatory

§120a.6 Self-explanatory

§120a.7 Self-explanatory

§120a.8 It is up to the individual or tribe seeking a consent under this section to solicit and obtain the consent. The consent should then be included in the acquisition record.

§120a.9 No specific format is required in making an acquisition request. However, in putting together the record that will be used to support an acquisition (and to defend it in case of litigation) the Agencies and Area Offices are entitled under §120a.11 to request any material necessary for inclusion in the record. Much of this additional information will be required because of §120a.10.

§120a.10(a) Under this part the specific acquisition authority(ies) being used should be identified. For IRA tribes (and individuals) the general authority is Section 5 of the IRA, 25 USC §465. Other authority(ies) can be cited if appropriate. For a non-IRA tribe, specific acquisition legislation relating to that tribe, if any, the Indian Financing Act, PL 93-638, or any other authority that is being used as a basis for the acquisition, should be noted.

The acquisition must meet the specifications of the particular statute which authorizes it *in addition to* the criteria of these regulations. For example, land acquired under the authority of PL 93-638 must be within reservation boundaries or adjoin trust land on at least two sides (*See* 25 U.S.C. §450h(3)) despite the broader provisions of 25 CFR §120a.3.

(b), (c) and (d) are all interrelated and cover information that must be supplied by the party requesting the acquisition. At this point it is difficult to specify all those things that should be considered under these sections, just as it is difficult to define precisely what should be considered when determining whether or not an applicant for a fee patent is competent. In general, information on personal income, social condition, education, and mental and physical condition can be considered. In other words, the record should answer the question -- Why should we take this particular land in trust for this person (or tribe)?

A statement of purpose (c) is necessary in order to make a determination under (f).

(e) and (f) If the land is presently in fee status, a letter (form letter attached) should be sent to the political subdivision in which the land is located asking for:

(1) the amount of taxes currently levied on the property

(2) whether there are any other special assessments (garbage, sewer etc.)

(3) what services the local community provides to the land

(4) what the current zoning of the property is, and

(5) any other comments the political subdivision may want to make.

If no response is received within 30 days, this should be noted in the record and an assumption made that there are no adverse impacts on the local government.

A copy of the local government's response, if any, should be furnished to the applicant. Should the local government raise objections which appear to the agency to present good cause for denying the application, the applicant should be given an opportunity to respond to the local government's objections. (For follow up action, see §120a.11.)

(g) Self-explanatory.

§120a.11 Except to the extent that Central Office action is required under §120a.3(a)(3) (above), the delegated authority to decide whether to accept land in trust is vested in the Area Directors. As soon as possible after the agency has transmitted the complete record to the Area Office, it should be reviewed, a decision made, and the applicant advised of the decision. A favorable decision should be based upon the record and should clearly show that the acquisition falls within the regulations and that the factors in §120a.10 have been considered. An adverse decision should show the reason for denial. If an application is denied, the applicant must be advised of the reasons for denial and of his or her right to appeal. If the local political subdivision has submitted timely comments, it should, as a courtesy, also be notified of the decision.

§120a.12 This section does not require an applicant to provide an abstract and other title evidence until after a decision on the request is made; this was done to prevent unnecessary expenses being incurred by an applicant. Implicit in this section is the assumption that no such title evidence is needed until the completion of all appeals. After the time limit for all appeals has expired, the title package (not including the acquisition record) should be transmitted to the Regional or Field Solicitor for a preliminary title opinion. After defects which render the title unmarketable are eliminated, the land may be placed in trust. Discretion to require elimination of defects which do not cause unmarketability is also provided by this section.

§120a.13 In the past there have been instances where a party has caused deeds to be written stating that the land was transferred to "the United States in Trust for . . . ". This section makes it clear that land is not in trust until there has been a formal acceptance. The form of the acceptance is dictated by the circumstances of the transaction.

As a summary, the general procedures are as follows:

1) An application is filed with the agency. (§120a.9)

2) The agency acknowledges receipt and requests (§120a.11) any additional information needed, particularly for §120a.10(b), (c) and (d). If the land is presently in fee status, the agency informs the applicant that the local political subdivision will be notified of the proposed acquisition and given an opportunity to comment.

3) If the land is presently in fee status, the agency notifies the local government(s) of the proposed acquisition and

requests appropriate input. (§120a.10(e)(f)) If necessary, the agency obtains response of applicant to local government's objections.

4) The acquisition record is transferred to the Area Office for a decision and the applicant notified of the decision. (§120a.11)

5) Local government(s) notified of decision, if it has submitted timely comments.

6) Time limit for all appeals allowed to expire.

7) Abstracts and other title evidence secured. (§120a.12)

8) Title documents sent to Solicitor for title opinion. (§120a.12)

9) Land taken in trust. (§120a.13)

10) Final title opinion if appropriate.

Cecil D. Andrus

Attachment

Dear

This agency has under consideration an application for acquisition of land by the United States to be held in trust for the benefit of:

the ________________ Tribe, or

________________, a member of the ___________ Tribe.

The property is described as follows:

The determination whether to acquire this property in trust will be made in the exercise of discretionary authority which is vested in the Secretary of the Interior. To assist us in the exercise of that discretion, pursuant to regulations published at 45 Fed. Reg. 62034 (September 18, 1980), 25 CFR §120a, we invite your comments on the proposed acquisition. In particular, information on the following matters is requested:

(1) The annual amount of property taxes currently levied on the property.

(2) Any special assessments, and amounts thereof, which are currently assessed against the property.

(3) Any governmental services which are currently provided to the property by your jurisdiction.

(4) If subject to zoning, how the property is currently zoned.

Information and comments should be addressed to this agency, to the attention of the undersigned. Any comments received within 30 days of the date of this letter will be considered. A copy of your comments will be made available to________________ (name of applicant). A determination of whether to acquire the land in trust will be made by the Area Director, ____________ Area, Bureau of Indian Affairs, (address). If you have submitted comments within 30 days of this letter, you will be notified of the Area Director's determination.

Sincerely,

LIST OF CURRENT FORMS

Budget

FORM NUMBER New	FORM NUMBER Old	TITLE	ISSUE DATE	MANUAL REFERENCE
5-4101	5-750	Advice of Allotment	5-65	42 BIAM 2.1.26

LIST OF CURRENT FORMS

Property and Supply Management

FORM NUMBER		TITLE	ISSUE DATE	MANUAL REFERENCE
New	Old			
5-4312	5-712	Property Invoice	5-53	43 BIAM 2.8D(7) (Supplement 2)
5-4313	5-714	Property Balance Sheet		43 BIAM 2.8D(7) (Supplement 2)
5-4314	5-720	Requisition	4-68	43 BIAM 2.8D(1) (Supplement 2)
5-4315	5-731	Production Report	1-48	43 BIAM 2.8D(14) (Supplement 2)
5-4316	5-733	Procurement Register	12-68	
5-4319	5-1529	Real Property Accountability Transaction	12-68	43 BIAM 2.11
5-4320	5-711	Return Material Credit		43 BIAM 2.8D(3) (Supplement 2)
5-4321	5-087	Abstract of Proposals	8-65	
5-4322	OCS-2	Quarters Accountability Transaction	8-69	
5-4323		Motor Vehicle Record	8-69	43 BIAM 2.9C(5)(a) & 43 BIAM 2.9C(5)(b)

LIST OF CURRENT FORMS

Property and Supply Management

FORM NUMBER		TITLE	ISSUE DATE	MANUAL REFERENCE
New	Old			
5-4324	5-260	Agreement for Transfer Federally-owned Buildings, Improvements, or Facilities Situated on Lands of any Indian Tribe, Band, or Group		43 BIAM 2.11
5-4325	5-707ML	Property Accountability Transaction (Multiple Transaction)	7-68	43 BIAM 2.8D(9) (Supplement 2)
5-4326	5-087A	Abstract of Proposals (Small Form)	1-69	

LIST OF CURRENT FORMS

Real Estate Appraisal

FORM NUMBER		TITLE	ISSUE DATE	MANUAL REFERENCE
New	Old			
5-5201	5-100A	Appraisal Report (Legal Description)	12-56	52 IAM 2.4.2B(1)
5-5202	5-100B	Appraisal Report (Neighborhood Analysis)	12-56	52 IAM 2.4.2B(1)
5-5203	5-100C	Appraisal Report (Detail Description of Land)	12-56	52 IAM 2.4.2B(1)
5-5204	5-100D	Appraisal Report (Detail Description of Improvements)	12-56	52 IAM 2.4.2B(1)
5-5205	5-100E	Appraisal Report (Market Data)	12-56	52 IAM 2.4.2B(1)
5-5206	5-100F	Appraisal Report (Capitalization of Income Analysis)	12-56	52 IAM 2.4.2B(1)
5-5207	5-100H	Appraisal Report (Correlation of Technique)	12-56	52 IAM 2.4.2B(1)
5-5208	5-100I	Appraisal Report (Photographs)	12-56	52 IAM 2.4.2B(1)
5-5209	5-100J	Appraisal Report (Tract Map)	12-56	52 IAM 2.4.2B(1)
5-5210	5-100K	Appraisal Report (Vicinity Map)	12-56	52 IAM 2.4.2B(1)
5-5211	5-100L	Appraisal Report (Fill-in)	12-56	52 IAM 2.4.2B(1)

LIST OF CURRENT FORMS

Real Estate Appraisal

FORM NUMBER New	FORM NUMBER Old	TITLE	ISSUE DATE	MANUAL REFERENCE
5-5212	5-110B	Appraisal Summary Log	1-66	52 IAM 2.4.2B(2)
5-5213	5-110D	Request for Real Estate Appraisal	6-57	52 IAM 2.4.2B(4)
5-5214	5-130	Sales Data and Analysis	2-57	52 IAM 2.4.2B(5)
5-5215	5-110C	Semiannual Report of Real Estate Appraisals		52 IAM 2.4.2B(3)
5-5216	GSA-1195	Application for Placement on BIA Register of Available Real Estate Appraisers	11-69	52 IAM 2.4.2B(9)

LIST OF CURRENT FORMS

Real Property Management

FORM NUMBER		TITLE	ISSUE DATE	MANUAL REFERENCE
New	Old			
5-5401	5-021	Trader's Bond	5-44	
5-5402	5-101	Consent to Sale	11-55	54 IAM 2.3.3A
5-5403	5-104b	Statement of Owners of Allotted Indian Lands to Accompany Application for Right-of-Way	9-58	
5-5404	5-105	Application for Patent-in-Fee or For Sale of Indian Land	5-55	54 IAM 2.2.3A(1)
5-5405	5-107	Summary of Family History and Inventory	10-48	
5-5406	5-108C	Data for Heirship Finding (Superseded by [illegible]		25 CFR 15.28
5-5407	5-109	Last Will and Testament	4-53	25 CFR 15.28
5-5408	5-109b	Affidavit to Accompany Indian Will		54 IAM 8; 25 CFR 15.28
5-5409	5-110d	Request for Real Estate Appraisal	6-57	54 IAM 5.3
5-5410	5-110f	Report on Application for a Certificate of Competency	1-55	54 IAM 2.1.4B(2)
5-5411	5-110g	[illegible] Easement, Sale of [illegible]		25 CFR 121.19

LIST OF CURRENT FORMS

Real Property Management

FORM NUMBER New	FORM NUMBER Old	TITLE	ISSUE DATE	MANUAL REFERENCE
5-5412	5-110h	Memorandum of Sale of Allotted Land		25 CFR 121.19
5-5413	5-110i	Certificate of Competency	6-49	54 IAM 2.1.4A(3)
5-5414	5-110L	Petition for Partition of Inherited Indian Land	4-53	54 IAM 2.3.3A
5-5415	5-110N	Report on Sale of Indian Land	5-55	54 IAM 2.2.3I(8)
5-5416	5-113	Schedule of Lands to be Sold	5-55	54 IAM 2.2.3D
5-5417	5-114	Invitation, Bid, and Award	1-60	54 IAM 2.2.3D
5-5418	5-118	Annual Report of Mineral Leasing Activities, June 30, 19___		54 IAM 13
5-5419	5-124	Land and Title Document Extract Sheet	2-60	
5-5420	5-125	Land Index	5-55	
5-5421	5-127B	Filmsort Aperture Card		
5-5422	5-127D	Filmsort Aperture Card		

LIST OF CURRENT FORMS

Real Property Management

FORM NUMBER New	FORM NUMBER Old	TITLE	ISSUE DATE	MANUAL REFERENCE
5-5423	5-138	Performance Bond	1-62	54 IAM 5.3
5-5424	5-145	Prospecting Permit for Oil and Gas (Non-exclusive without Option to Lease)	8-57	54 IAM 6.4.1
5-5425	5-152	Annual Report of Caseloads, Acreages Under BIA, and Surface Leasing		54 IAM 13
5-5426	5-154a	Lessee's Bond Supported by Government Securities	11-55	25 CFR 171.6(a)
5-5427	5-154b	Bond to Accompany Mining Leases	10-56	25 CFR 171.6(a)
5-5428	5-154d	Evidence of Authority of Officers to Execute Papers	11-55	54 IAM 6.5
5-5429	5-154e	Assignment of Mining Lease	5-59	54 IAM 6.5
5-5430	5-154f	Collective Bond	10-56	54 IAM 6.4.1
5-5431	5-154g	Affidavit of Surety	5-51	
5-5432	5-154h	Oil and Gas Mining Lease - Allotted	1-62	25 CFR 172.16

LIST OF CURRENT FORMS

Real Property Management

FORM NUMBER		TITLE	ISSUE DATE	MANUAL REFERENCE
New	Old			
5-5433	5-154j	Sand, Gravel, Pumice, Building Stone Permit	6-56	54 IAM 5.3
5-5434	5-154k	Sand, Gravel, Pumice, Building Stone Permit (Short-term Form)	3-58	54 IAM 5.3
5-5435	5-154m	Bond to Cover Obligations of Assignees	10-56	25 CFR 171.6(a)
5-5436	5-155	Mineral Prospecting Permit	10-57	
5-5437	5-155b	Mineral Prospecting Permit (Exclusive with option)	10-57	
5-5438	5-156	Nationwide Oil and Gas Lease Bond	10-56	25 CFR 171.6(b)
5-5439	5-157	Oil and Gas Mining Lease - Tribal Indian Lands	7-64	54 IAM 6.4.8.4
5-5440	5-159	Mining Lease Indian Lands (For mineral Other than Oil and Gas)	10-57	
5-5441	5-180	Lease (Farming, Farming and Grazing, or Farm Pasture)	1-62	54 IAM 5.3
5-5442	5-180m	Cancellation (Lease)	5-48	54 IAM 5.3

LIST OF CURRENT FORMS

Real Property Management

FORM NUMBER New	FORM NUMBER Old	TITLE	ISSUE DATE	MANUAL REFERENCE
5-5443	5-180n	Modification (Lease)	12-50	54 IAM 5.3
5-5444	5-180o	Assignment of Agricultural or Business Lease	5-48	54 IAM 5.3
5-5445	5-181	Business Lease	10-61	54 IAM 5.3
5-5446	5-183	Deed to Restricted Indian Land	9-56	54 IAM 2.2.3H(1)(a)
5-5447	5-183b	Deed to Restricted Indian Land (Special Form)		54 IAM 2.2.3H(1)(c)
5-5448	5-184	Lease	11-62	54 IAM 5
5-5449	5-185	Deed to Restricted Indian Conveying Land Purchased Under Act of Congress - Approved June 30, 1932		54 IAM 2.2.3H(b)
5-5450	5-186	Individual Indian or Tribal Realty Interests	12-60	
5-5451	5-188a	Title Status Report (Description of Realty Services)	12-60	
5-5452	5-188b	Title Status Report (Individual or Tribal Ownership and Shares)	12-60	

LIST OF CURRENT FORMS

Real Property Management

FORM NUMBER New	FORM NUMBER Old	TITLE	ISSUE DATE	MANUAL REFERENCE
5-5453	5-188c	Title Status Report (Encumbrance Sheet) (3 sheets)	4-65	
5-5454	5-214	Receipt for Patent		54 IAM 2
5-5455	5-405	Index and Heirship Card - Enrollee		
5-5456	5-405a	Inherited Interests in Estates		
5-5457	5-407	Allotment or Estate Record		
5-5458	5-407a	Allotment or Estate Record (Continuation Sheet)		
5-5459	5-462b	Agreement to Pay Construction, Operation, and Maintenance Charges -- Sale of Irrigable Lands		25 CFR 121.21
5-5460	5-1471	Lease	8-63	54 IAM
5-5461	5-1495	Residential Lease	8-64	54 IAM 5.3
5-5462		Application for Certificate of Eligibility for Allotment of Public Domain		

Section II

Authorized BIA Reports

As with the Bureau's forms numbering system, the reports are assigned numbers which associate reports, forms, and directives with the initiating office. The reports numbering system consist of the manual classification number, a hyphen, and serial number. (Example: The first report required by 33 BIAM is number 33-01.) The numbering system is described in full in 33 BIAM 3.4A.

Those reports that were previously assigned numbers consisting of the manual classification and serial number have not been changed. Report numbers which ended with an alphabetical symbol have, however, been changed. The change was made by dropping the alphabetical symbol and using the same serial number or the next available serial number. (Example: 1. Report 33-1A would be changed to 33-01. 2. Report 33-1B would be changed to 33-02 or next available serial number.)

LIST OF CURRENT REPORTS

Real Property Management

REPORT NUMBER	TITLE	FREQ. OF SUB.	FORM OR FORMAT USED	MANUAL REFERENCE
54-02	Annual Report of Caseloads, Acreages Under BIA, and Surface Leasing, June 30, 19___	A	5-5425	54 IAM 13
54-05	Annual Report of Mineral Leasing Activities, June 30, 19___	A	5-5418	54 IAM 13
54-06	Summary of Number of Installations owned by the United States (Individual and Tribal Trust Properties)	A	GSA Form 1209	FPMR 101.3.4901 & BOB Cir. A-2 (See Property & Supply Report 43-09)
54-07	Annual Report of Real Property owned by the United States (Individual and Tribal Trust Properties)	A	GSA Form 1166	GSA Regs. 2-XI-201.0 (See Property & Supply Report 43-08)
54-08(C)	Land Index (Historical Record of Land Transactions)	On request	5-5420	54 IAM
54-09(C)	Individual Indian or Tribal Realty Interests	On request	5-5450	54 IAM

LIST OF CURRENT REPORTS

Real Property Management

REPORT NUMBER	TITLE	FREQ. OF SUB.	FORM OR FORMAT USED	MANUAL REFERENCE
54-10(C)	Title Status Report (Description of Realty Services)	On request	5-5451	54 IAM
54-11(C)	Title Status Report (Individual or Tribal Ownership Shares)	On request	5-5452	54 IAM
54-12(C)	Master Land Description Report	On request	Computer prepared	54 IAM
54-13(C)	Tract History Listing	On request	Computer prepared	54 IAM
54-14(C)	Acreage Statistics	On request	Computer prepared	54 IAM
54-15(C)	Heirship Statistics	On request	Computer prepared	54 IAM
54-16(C)	Ownership Statistics	On request	Computer prepared	54 IAM
54-17(C)	Monthly Summary of Real Property Accounts	MO.	Computer prepared	35 IAM
54-18(C)	Monthly Trial Balance	MO.	Computer prepared	35 IAM

LIST OF CURRENT REPORTS

Real Property Management

REPORT NUMBER	TITLE	FREQ. OF SUB.	FORM OR FORMAT USED	MANUAL REFERENCE
54-19(C)	Real Property Listing	On request	Computer prepared	35 IAM
54-20(C)	Selected Agency or Unit Listing	On request	Computer prepared	35 IAM
54-21(C)	Annual Real Property Report	A	Computer prepared	35 IAM

CHAPTER I

HISTORY, AUTHORITY AND METHODS OF SALE OR TRANSFER OF INDIAN LAND

T or F		
T	(1)	Acquisition and Disposal as it relates to individual and tribal land interest includes the sale, purchase or other means of transferring ownership interest in land.
T	(2)	The Acquisition and Disposal responsibilities of the Branch of Real Property is basically that of a real estate agent, escrow agent and a county recorders office for Indian real estate transactions.
T	(3)	The trust responsibility of the United States with regard to Indian land started in the Colonial period when English laws and practices held that title to newly discovered land was with the English Crown but subject to a compensable right of occupancy to the aboriginal people.
T	(4)	During the 1850's, the division of tribal lands and the efforts to terminate tribal existence through the allotment process assumed a pattern for breaking up tribal estates. This matter of acquisition of land by individuals during the treaty making period served as models for legislation that led up to the General Allotment Act.
F	(5)	The use of the tribal estate by individual Indians and the recognition of such a "right" served as a basis for assigning land and this, combined with other "nation interests", expedited the allotment efforts.
F	(6)	During the Post Civil War Allotment Era there was a belief that self-sufficient, self-government, development of reservation economies along with removing legal barriers which hinder growth would serve as a stimulus to the Indians.
T	(7)	The Indian Reorganization Act ended the Allotment Era and authorized the Secretary to acquire lands in trust for tribes which accepted the IRA and was designed to prevent the alienation of Indian lands.
T	(8)	25 CFR 152 and the Indian Land Consolidation Act of 1983 (ILCA), as amended, represent the foundation of the present land sale policy. The United States through the Bureau of Indian Affairs recognizes its trust responsibility to the Indian landowners to provide him with full knowledge of his lands, its uses, potential and rights.

T (9) **The purpose of the Act of January 12, 1983, as amended, is to allow Indian Tribes to (1) consolidate their tribal landholdings; (2) to eliminate certain undivided fractionated interest in Indian trust or restricted lands; and (3) to keep trust or restricted lands in Indian ownership by allowing tribes to adopt certain laws restricting inheritance of Indian lands to Indians.**

T (10) **The primary purpose of the Indian Land Consolidation Act is to facilitate consolidation of tribal lands and reduce the numbers of small fractional interests in individually allotted lands.**

Chapter 3

Review of Regulations (25 CFR 152)

T or F

T (1) Patents in fee, certificates of competency and removal of restrictions provide a means by which Indian landowners can sell, use or lease property free of Federal control.

F (2) It is the policy of the Bureau of Indian Affairs to approve all applications for patents in fee, certificates of competency and orders removing restrictions when an adult Indian owner makes application for such.

T (3) The Bureau of Indian Affairs as trustee must protect the seller (the Indian landowner) to assure him of the maximum return on the sale, and if in fact, the sale should be made at all.

T (4) The regulations Bureau of Indian Affairs Real Property Management staff are required to use for the sale, exchange, and conveyances of trust or restricted Indian lands are found in 25 CFR 152.17 through 152.32.

T (5) A method used to divide the undivided interest and determine the specific piece of land to be owned by one or more of the heirs in an allotment is to partition the land.

T (6) A petition to partition is presented pursuant to policy and procedures for processing a partition as found in 54 BIAM 2.3.3.

T (7) Any Indian 21 year of age or over may apply for a patent in fee for his trust land. A written application shall be made in the form approved by the Secretary and shall be completed and filed with the agency having immediate jurisdiction over the land.

Chapter 2

Conveyances of Indian Land

T or F

T (1) A deed is a legal instrument used for the conveyance of Indian land. As a minimum, the deed requires, the name of the present owner (grantor), the name of the entity acquiring the land (grantee), the value received for the transaction (consideration), the specific location of the land (legal description), and the signature of the grantor (execution).

F (2) A Warranty deed is used when there is doubt as to the land title (clouds on the title) and when the conveyance has direct authorization by an Act or Acts of Congress.

T (3) A Quick Claim deed is used when there are problems with the title, descriptions or to clear title defects.

T (4) The requirements for a valid deed are: must be dated, signed and have all the blanks on the form properly completed. The items to be included on the deed for are the date, the names of the grantor and grantee, the consideration, the legal description, the authorities, liens, exceptions and must be properly notarized.

T (5) Three types of patents were discussed in relationship to ownership of Indian lands, they are (1) trust patents, (2) fee patents, and (3) restricted fee patents.

F (6) Patents are instruments which represent a grant of title to a tract of land. Such patents are granted by the United States and issuance of patents are done by the Bureau of Indian Affairs

F (7) Lands held under trust title can be taxed and encumbered as well as being sold without the approval of the Secretary of the Interior or his authorized representative.

T (8) The requirements for land sales differ between IRA and non-IRA tribes because of the language in the legislation.

Answers - Session Four
Regulations on Acquisition

True	False		
T	[✓ F]	1.	Section 5 of the Indian Reorganization Act authorizes the Secretary of the Interior to purchase land for individuals and tribes organized under the provisions of this Act and make it a part of the reservation.
T	[✓ F]	2.	A non-IRA tribe may utilize Section 203 of the Indian Land Consolidation Act to acquire land in trust notwithstanding previously enacted legislation to the contrary.
[✓ T]	F	3.	An Indian tribe may use the Indian Financing Act to have lands taken into trust off-reservation as long as they are within an approved "tribal consolidation area".
T	[✓ F]	4.	Fee land purchased by a tribe may be converted to trust under FmHa (Act of April 11, 1970) if the land is within the boundaries of the reservation and if it is bordered on one side by trust land.
T	[✓ F]	5.	Tribe acquiring land in fee simple status must follow procedures outlined in 25 CFR 151.
[✓ T]	F	6.	Tribes wishing to acquire land in trust status must submit their request to the local agency addressing the seven factors listed in 25 CFR 151.10 and complying with the National Environment Protection Act (NEPA).
[✓ T]	F	7.	An individual Indian may request to have fee land to be taken in trust status 10 miles outside the boundary of the reservation by requesting the Secretary to waive the regulations found in 25 CFR 151.3(b).
[✓ T]	F	8.	25 CFR 151 - Land Acquisitions and 25 CFR 152 - Sales are currently being revised to incorporate certain provisions of the Indian Land Consolidation Act (ILCA).